CUSHING'S MANUAL

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MANUAL OF PARLIAMENTARY PRACTICE.

RULES

OF

PROCEEDING AND DEBATE

IN

DELIBERATIVE ASSEMBLIES.

BY LUTHER S. CUSHING.

WITH ADDITIONAL NOTES BY THE PUBLISHER.

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PUBLISHER'S ADVERTISEMENT.

THIS new edition of *Cushing's Parliamentary Manual* has been put in type from a copy of the original edition, (now out of copyright), and is identical in matter with the present Boston edition, excepting three or four pages of comments by the author's brother, which do not modify the text, nor present any new rule of proceeding or debate. The Manual was so thorough and complete, as it came from the hands of its author, that any attempt to revise it in conformity with arbitrary statutes, or rules made for a particular purpose, but having no universal application to parliamentary law, would be not only presumptuous, but lead to confusion. The additional notes, however, which are enclosed in brackets, will be found useful, and will make this edition more valuable than any other. Several topics and new forms not treated by Mr. Cushing have been introduced.

AUTHOR'S PREFACE.

THE following treatise forms a part only of a much larger and more comprehensive work, covering the whole ground of parliamentary law and practice, which the author has for some time been engaged in preparing; and which it is his intention to complete and publish, as soon as possible. In the mean time, this little work has been compiled, chiefly from the larger, at the request of the publishers, and to supply a want, which was supposed to exist to a considerable extent.

The treatise, now presented to the public, is intended as a *Manual for Deliberative Assemblies* of every description, but more especially for those which are not legislative in their character; though, with the exception of the principal points, in which legislative bodies differ from others, namely, the several different stages or readings of a bill, and conferences and amendments between the two branches, this work will be found equally useful in legislative assemblies as in others.

The only work, which has hitherto been in general

use in this country, relating to the proceedings of legislative assemblies, is the compilation originally prepared by Mr. Jefferson, when vice-president of the United States, for the use of the body over which he presided, and which is familiarly known as *Jefferson's Manual.* This work, having been extensively used in our legislative bodies, and, in some states, expressly sanctioned by law, may be said to form, as it were, the basis of the common parliamentary law of this country. Regarding it in that light, the author of the following treatise has considered the principles and rules laid down by Mr. Jefferson (and which have been adopted by him chiefly from the elaborate work of Mr. Hatsell) as the established rules on this subject, and has accordingly made them the basis of the present compilation, with an occasional remark, in a note, by way of explanation or suggestion, whenever he deemed it necessary.

Members of legislative bodies, who may have occasion to make use of this work, will do well to bear in mind, that it contains only what may be called the *common parliamentary law ;* which, in every legislative assembly, is more or less modified or controlled by special rules.

L. S. C.

Boston, November 1, 1844.

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PARLIAMENTARY PRACTICE.

INTRODUCTION.

1. The purposes, whatever they may be, for which a deliberative assembly of any kind is constituted, can only be effected by ascertaining the sense or will of the assembly, in reference to the several subjects submitted to it, and by embodying that sense or will in an intelligible, authentic, and authoritative form. To do this, it is necessary, in the first place, that the assembly should be promptly constituted and organized; and, secondly, that it should conduct its proceedings according to certain rules, and agreeably to certain forms, which experience has shown to be the best adapted to the purpose.

2. Some deliberative assemblies, especially those which consist of permanently established bodies, such as municipal and other corporations, are usually constituted and organized, at least, in part, in virtue of certain legal pro-

visions; while others, of an occasional or temporary character, such as conventions and political meetings, constitute and organize themselves on their assembling together for the purposes of their appointment.

3. The most usual and convenient mode of organizing a deliberative assembly is the following:—The members being assembled together, in the place, and at the time appointed for their meeting, one of them addressing himself to the others, requests them to come to order; the members thereupon seating themselves, and giving their attention to him, he suggests the propriety and necessity of their being organized, before proceeding to business, and requests the members to nominate some person to act as chairman of the meeting; a name or names being thereupon mentioned, he declares that such a person (whose name was first heard by him) is nominated for chairman, and puts a question that the person so named be requested to take the chair. If this question should be decided in the negative, another nomination is then to be called for, and a question put upon the name mentioned (being that of some other person) as before, and so on until a choice is effected.

When a chairman is elected, he takes the chair, and proceeds in the same manner to complete the organization of the assembly, by the choice of a secretary and such other officers, if any, as may be deemed necessary.

4. An organization, thus effected, may be, and frequently is, sufficient for all the purposes of the meeting; but if, for any reason, it is desired to have a greater number of officers, or to have them selected with more deliberation, it is the practice to organize temporarily, in the manner above mentioned, and then to refer the subject of a permanent organization, and the selection of persons to be nominated for the several offices, to a committee; upon whose report, the meeting proceeds to organize itself, conformably thereto, or in such other manner as it thinks proper.

[The presiding officer is called the "speaker" in Congress, and in the lower branches of all our State legislatures, as well as in a few State Senates. In the majority of State Senates as well as in the U. S. Senate, he is denominated the President. In both Houses of the English Parliament he is called Speaker; the Lord Chancellor is Speaker of the House of Lords; the Commons elect their own

Speaker, whose election, on the following day, must be approved by the Lord Chancellor, (representing the crown) in the House of Lords. The presiding officer is figuratively denominated THE CHAIR in deliberative assemblies. The chairman of a town meeting, and of religious bodies, is frequently called the *Moderator*—ED.]

5. The presiding officer is usually denominated the *president*, and the recording officer, the *secretary;* though, sometimes, these officers are designated, respectively, as the *chairman* and *clerk*. It is not unusual, besides a president, to have one or more vice-presidents; who take the chair, occasionally, in the absence of the president from the assembly, or when he withdraws from the chair to take part in the proceedings as a member; but who, at other times, though occupying seats with the president, act merely as members. It is frequently the case, also, that several persons are appointed secretaries, in which case, the first named is considered as the principal officer. All the officers are, ordinarily, members of the assembly*; and, as such, entitled to participate

* In legislative bodies, the clerk is seldom or never a member; and, in some, the presiding officer is not a member; as, for example, in the Senate of the United States, the Senate of New York, and in some other State senates.

in the proceedings; except that the presiding officer does not usually engage in the debate, and votes only when the assembly is equally divided.

[The Vice-President of the United States is, by Constitutional provision, President of the Senate of U.S. In the event of his death, absence, or of the office of President of the United States devolving upon him, the Senate may elect a President *pro tempore*. In the British House of Commons, the Clerk is appointed by the Crown. The Speaker elected by the House at the instance of, and to be approved by the Crown, (*vide note, Par.* 4), does not take part in a debate, offer his opinion, or vote except in case of equality, when he has a casting vote. The Lord Chancellor, by virtue of his office, is Speaker of the Lords, and in his absence, the Chairman of the Committee of Ways and Means takes the Chair (as he does also in the Commons, in the Speaker's absence). The Speaker is not, as in the Lower House, charged with the maintenance of order, or the decision of who is to be heard, which rests with the House itself. He can take part in a debate; he votes on divisions, but has no casting vote, and on an equality, the "Non-contents," or Nays, prevail.—Ed.]

6. In all deliberative assemblies, the members of which are chosen or appointed to represent others, it is necessary, before proceeding to business, to ascertain who are duly elected and returned as members; in order not only that no person may be admitted to participate in the proceedings who is not regularly authorized to do so, but also that a list of the members may be made for the use of the assembly and its officers.

7. The proper time for this investigation is after the temporary and before the permanent organization; or, when the assembly is permanently organized, in the first instance, before it proceeds to the transaction of any other business; and the most convenient mode of conducting it is by the appointment of a committee, to receive and report upon the credentials of the members. The same committee may also be charged with the investigation of rival claims, where any such are presented.

8. When a question arises, involving the right of a member to his seat, such member is entitled to be heard on the question, and he is then to withdraw from the assembly until it is decided; but if, by the indulgence of the as-

sembly, he remains in his place, during the discussion, he ought neither to take any further part in it, nor to vote when the question is proposed; it being a fundamental rule of all deliberative assemblies, that those members, whose rights as such are not yet set aside, constitute a judicial tribunal to decide upon the cases of those whose rights of membership are called in question.* Care should always be taken, therefore, in the selection of the officers, and in the appointment of committees, to name only those persons whose rights as members are not objected to. [* "Each house shall be judge of the elections, returns and qualifications of its own members."—Sec. 5, (1) Constitution of the United States.]

9. The place where an assembly is held being in its possession, and rightfully appropriated to its use, no person is entitled to be present therein, but by the consent of the assembly; and, consequently, if any person refuse to withdraw, when ordered to do so, or conduct himself in a disorderly or improper manner, the assembly may unquestionably employ sufficient force to remove such person from the meeting. [*Vide Par.* 316.]

10. Every deliberative assembly, by the

mere fact of its being assembled and constituted, does thereby necessarily adopt and become subject to those rules and forms of proceeding, without which it would be impossible for it to accomplish the purposes of its creation.* It is perfectly competent, however, for every such body—and where the business is of considerable interest and importance, or likely to require some time for its accomplishment, it is not unusual—to adopt also certain special rules for the regulation of its proceedings. Where this is the case, these latter supersede the ordinary parliamentary rules, in reference to all points to which they relate; or add to them in those particulars in reference to which there is no parliamentary rule; leaving what may be called the common parliamentary law in full force in all other respects.

[*In England, one Parliament can bind its successors by "Standing Orders," or regulations, adopted at different periods, relating to internal order, introduction of bills and promulgation of statutes. A standing order endures until repealed, (or "vacated," as it is called in the Upper House); but each House is also in the practice of agreeing to certain

orders or *resolutions* of uncertain duration declaratory of its practice, which are considered less formally binding than standing orders.

In the United States, on the contrary, each deliberative body adopts its own rules, and these, except as *precedents*, (which necessarily exercise a great moral force), are not binding on its successors, or on any other assembly. But all recognise the binding force of general parliamentary law, without which every numerous assembly would become a mob,—no systematic business could be transacted and no useful legislation would be possible.—Ed.]

11. The rules of parliamentary proceedings in this country are derived from, and essentially the same with, those of the British parliament; though, in order to adapt these rules to the circumstances and wants of our legislative assemblies, they have, in some few respects, been changed,—in others, differently applied,— and in others, again, extended beyond their original intention. To these rules, each legislative assembly is accustomed to add a code of its own, by which, in conjunction with the former, its proceedings are regulated. The rules, thus adopted by the several legislative assemblies, having been renewed in suc-

cessive legislatures,—with such extensions, modifications and additions as have been from time to time, thought necessary,—the result is, that a system of parliamentary rules has been established in each state, different in some particulars from those of every other state, but yet founded in and embracing all the essential rules of the common parliamentary law.

12. The rules of proceeding, in each state, being of course best known by the citizens of that state, it has sometimes happened in deliberative assemblies, that the proceedings have been conducted not merely according to the general parliamentary law, but also in conformity with the peculiar system of the state in which the assembly was sitting, or of whose citizens it was composed. This, however, is erroneous; as no occasional assembly can ever be subject to any other rules, than those which are of general application, or which it specially adopts for its own government; and the rules adopted and practised upon by a legislative assembly do not thereby acquire the character of general laws. [*Par.* 10, *note.*]

13. The judgment, opinion, sense, or will of a deliberative assembly is expressed, accord

ing to the nature of the subject, either by a resolution, order, or vote. When it commands, it is by an *order;* but facts, principles, its own opinions, or purposes, are most properly expressed in the form of a *resolution;* the term *vote* may be applied to the result of every question decided by the assembly. In whatever form, however, a question is proposed, or by whatever name it may be called, the mode of proceeding is the same.

14. The judgment or will of any number of persons, considered as an aggregate body, is that which is evidenced by the consent or agreement of the greater number of them; and the only mode by which this can be ascertained, in reference to any particular subject, is for some one of them to begin by submitting to the others a proposition, expressed in such a form of words, that, if assented to by the requisite number, it will purport to express the judgment or will of the assembly. This proposition will then form a basis for the further proceedings of the assembly; to be assented to, rejected, or modified, according as it expresses or not, or may be made to express the sense of a majority of the members. The different proceedings which take place, from

the first submission of a proposition, through all the changes it may undergo, until the final decision of the assembly upon it, constitute the subject of the rules of debate and proceeding in deliberative assemblies.

15. If the proceedings of a deliberative assembly were confined to the making of propositions by the individual members, and their acceptance or rejection by the votes of the assembly, there would be very little occasion for rules in such a body But this is not the case. The functions of the members are not limited to giving an affirmative or negative to such questions as are proposed to them. When a proposition is made, if it be not agreed to or rejected at once, the assembly may be unwilling to consider and act upon it at all; or it may wish to postpone the consideration of the subject to a future time; or it may be willing to adopt the proposition with certain modifications; or, lastly, approving the subject-matter, but finding it presented in so crude, imperfect, or objectionable a form, that it cannot in that state be considered at all, the assembly may desire to have the proposition further examined and digested, before being presented. In order to enable the assembly

to take whichever of the courses above indicated it may think proper, and then to dispose of every proposition in a suitable manner, certain motions or forms of question have been invented, which are perfectly adapted for the purpose, and are in common use in all deliberative assemblies.

CHAPTER I.

OF CERTAIN PRELIMINARY MATTERS.

16. Before entering upon the subject of the forms and rules of proceeding, in the transaction of business, it will be convenient to consider certain matters of a preliminary nature, which are more or less essential to the regularity, despatch, and efficiency of the proceedings.

Section I. Quorum.*

[* "The term *quorum* (literally, *of whom*) is one of the words used in England in the Latin form of the commission to justices of the peace. The part of the document wherein the word occurs reads thus: 'We have assigned you, and every two or more of you, *quorum aliquem vestrum*, A, B, C, D, etc., *unum esse volumus*,—i. e., *of whom* we will that any one of you, A, B or C, etc., shall be one.' This made it necessary that certain individuals, who, in the language of the commission, were said to be of the

quorum, should be present during the transaction of business."—*Blackstone's Commentaries*, I. 352.]

17. In all councils, and other collective bodies of the same kind, it is necessary, that a certain number, called a quorum, of the members, should meet and be present, in order to the transaction of business. This regulation has been deemed essential to secure fairness of proceeding; and to prevent matters from being concluded in a hasty manner, or agreed to by so small a number of the members, as not to command a due and proper respect.

18. The number necessary to constitute a quorum of any assembly may be fixed by law, as is the case with most of our legislative assemblies; or by usage, as in the English House of Commons [where forty constitute a quorum; in the House of Lords, three]; or it may be fixed by the assembly itself; but if no rule is established on the subject, in any of these ways, a majority of the members composing the assembly is the requisite number.

19. No business can regularly be entered upon until a quorum is present; nor can

any business be regularly proceeded with when it appears that the members present are reduced below that number; consequently, the presiding officer ought not to take the chair until the proper number is ascertained to be present; and if, at any time, in the course of the proceedings, notice is taken that a quorum is not present, and, upon the members being counted by the presiding officer, such appears to be the fact, the assembly must be immediately adjourned. [See Yeas and Nays, Par. 26.]

Sect. II. Rules and Orders.

20. Every deliberative assembly, as has already been observed, is, by the fact alone of its existence, subject to those rules of proceeding, without which it could not accomplish the purposes of its creation. It may also provide rules for itself, either in the form of a general code established beforehand, or by the adoption, from time to time, during its sitting, of such special rules as it may find necessary.

21. When a code of rules is adopted beforehand, it is usual also to provide therein as to the mode in which they may be amended, re-

pealed, or dispensed with. Where there is no such provision, it will be competent for the assembly to act at any time, and in the usual manner, upon questions of amendment or repeal; but in reference to dispensing with a rule, or suspending it, in a particular case, if there is no express provision on the subject, it seems that it can only be done by general consent. [A motion to suspend the rules is not debatable.]—Ed.

22. When any of the rules, adopted by the assembly, or in force, relative to its manner of proceeding, is disregarded or infringed, every member has the right to take notice thereof and to require that the presiding officer, or any other whose duty it is, shall carry such rule into execution; and, in that case, the rule must be enforced, at once, without debate or delay. It is then too late to alter, repeal, or suspend the rule; so long as any one member insists upon its execution, it must be enforced.

Sect. III. Time of Meeting.

23. Every assembly, which is not likely to finish its business at one sitting, will find it convenient to come to some order or resolu-

tion beforehand, as to the time of reassembling, after an adjournment; it being generally embarrassing to fix upon the hour for this purpose, at the time when the sitting is about to close, and in connection with the motion to adjourn.

Sect. IV. Principle of Decision.

24. The principle, upon which the decisions of all aggregate bodies, such as councils, corporations, and deliberative assemblies, are made, is that of the majority of votes or suffrages; and this rule holds not only in reference to questions and subjects, which admit only of an affirmative on one side, and a negative on the other, but also in reference to elections in which more than two persons may receive the suffrages.

25. But this rule may be controlled by a special rule in reference to some particular subject or question; by which any less number than a majority may be admitted, or any greater number required to express the will of the assembly. Thus, it is frequently provided, in legislative assemblies, that one-third or one-fourth only of the members shall be sufficient to require the taking of a question

by yeas and nays,* and, on the other hand, that no alteration shall take place in any of the rules and orders, without the consent of at least two-thirds, or even a larger number.

[* The "Yeas and Nays" is a mode of exposing to their constituents the votes of members of representative bodies which is peculiar to the United States; it is not practised in the English parliament and other transatlantic legislatures; and here its use is confined almost exclusively to such bodies.

One of the standing rules of the Senate is as follows, viz.:

"When the yeas and nays shall be called for by one-fifth of the Senators present, each Senator called upon shall, unless for special reasons he be excused by the Senate, declare openly and without debate his assent or dissent to the question. In taking the yeas and nays, and upon a call of the Senate, the names of the Senators shall be called alphabetically."

But there is no rule or precedent to guide the Senate as to what they may do if a Senator refuses to vote. Suppose he is called again and again, and still contumaciously stands out and refuses to vote, and is able to defeat a quorum by that course, what is the Senate to do, or what can it do? There is no time to pass a law or make a new rule—no power to expel or punish the refractory member.

Thus it is sometimes impracticable to secure a quorum by an attempt to enforce this rule, as appears in the proceedings of the senate February 23, 1871:—

At 10 P. M., Mr. Conkling, late as it was, moved that the Senate proceed to the consideration of House Bill No. 2,634, which was a bill to amend the act passed May 31,

1870, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union and for other purposes," known generally as the "Force bill." This motion was resisted vigorously by the Democrats present, of whom, out of a total of eleven in the body, only four were then in their seats, viz.: Messrs. Bayard, Casserly, Johnston, and Thurman.

There were not Republicans enough in the chamber to constitute a quorum, and when the vote on taking up the bill was taken, the four Democrats sat in their seats, and, with a view to defeat the consideration of the bill, refrained from voting. When the vote was announced the presiding officer (Mr. Carpenter) stated that there was not a quorum voting—the number falling short by two.

The yeas and nays were called for and ordered, and the roll called, and then Mr. Conkling said: "I call the attention of the Senate and of the Chair to the rule which imposes upon Senators present the obligation of voting, and in that connection I call attention to the fact that the honorable Senator from Ohio (Mr. Thurman), the honorable Senator from California (Mr. Casserly), the honorable Senator from Delaware (Mr. Bayard), and the honorable Senator from Virginia (Mr. Johnston), all being now in their seats, according to my hearing of the roll call, have not voted, although their names have been called.

Mr. Thurman then asked Mr. Conkling what he was going to do about it.

Thereupon Mr. Conkling moved that the names of the four Senators who refused to vote be called again, and it was so ordered. The name of Mr. Bayard came first, and when it was called he arose and said:

Mr. President, is it the ruling of the Chair that I, under the rules of the Senate, am compelled to vote one way or the other in this case? I desire to be excused from voting on this question."

The Presiding Officer—The Chair is of opinion that the Senator from Delaware is too late to ask to be excused, and that it was his duty to vote under the rule, and after some debate his name was called once more and he voted "Nay."

The Clerk then proceeded to a regular call of the list, when Mr. Conkling interposed and directed him to call only the four to whom attention had been called.

Mr. Casserly said that as Mr. Bayard's request to be excused had been denied he would not ask it.

The Presiding Officer—Does the Senator from California vote on this question either way?

Mr. Casserly made no reply.

Mr. Johnston said that as it was decided that a Senator being in his place should vote when called he would do so, and then went on to say: "At the same time——" when the Chair interposed and said debate was not in order. Then Mr. Johnston voted "Nay."

The clerk then called the name of Mr. Thurman, and there was no response, though he was in his seat.

There still being no quorum voting, a motion was made that the sergeant-at-arms bring in the absentees. But several Republican Senators came in just then and made a quorum, and carried the motion to take up the bill. But whether a Senator can be made to vote, if he persistently refuses, and how to make him, are still unsolved problems.

CHAPTER II.

OF THE OFFICERS.

26. The usual and necessary officers of a deliberative assembly are those already mentioned, namely, a presiding, and a recording, officer; both of whom are elected or appointed by the assembly itself, and removable at its pleasure. These officers are always to be elected by absolute majorities, *even in those states in which elections are usually effected by a plurality*,* for the reason, that, being removable at the pleasure of the assembly, if any number short of a majority were to elect,

a person elected by any such less number would not be able to retain his office for a moment; inasmuch as he might be instantly removed therefrom, on a question made for that purpose, by the votes of those who had voted for other persons on the election; and it is essential to the due and satisfactory performance of the functions of these officers, that they should possess the confidence of the assembly, which they cannot be said to do, unless they have the suffrages of at least a majority.

[* In this sentence, which we have italicized, the author evidently means that the practice of electing officers by a plurality does not work well, nor promote harmony in the assembly adopting it, in conformity with a special law, or by its own vote. In a factious assembly, dominated by party spirit, it is sometimes a tedious work to secure a majority for the election of Speaker, and its organization is thereby seriously delayed. But a candidate sufficiently popular to secure a majority of the votes, and to retain the respect of members, should, if possible, be nominated and elected irrespective of partisan considerations, as president of every deliberative body.—Ed.]

Sect. I The Presiding Officer.

27. The principal duties of this officer are the following:—

To open the sitting, at the time to which the assembly is adjourned, by taking the chair and calling the members to order;

To announce the business before the assembly in the order in which it is to be acted upon;

To receive and submit, in the proper manner, all motions and propositions presented by the members;

To put to vote all questions, which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result;

To restrain the members, when engaged in debate, within the rules of order;

To enforce on all occasions the observance of order and decorum among the members;

To receive all messages and other communications and announce them to the assembly;

To authenticate, by his signature, when necessary, all the acts, orders, and proceedings of the assembly;

To inform the assembly, when necessary, or

when referred to for the purpose, in a point of order or practice ;

To name the members (when directed to do so in a particular case, or when it is made a part of his general duty by a rule,) who are to serve on committees ; and, in general,

To represent and stand for the assembly, declaring its will, and, in all things, obeying implicitly its commands.

28. If the assembly is organized by the choice of a president, and vice-presidents, it is the duty of one of the latter to take the chair, in case of the absence of the president from the assembly, or of his withdrawing from the chair for the purpose of participating in the proceedings.

29. Where but one presiding officer is appointed, in the first instance, his place can only be supplied, in case of his absence, by the appointment of a president or chairman *pro tempore*; and, in the choice of this officer, who ought to be elected before any other business is done, it is the duty of the secretary to conduct the proceedings.

30. The presiding officer may read sitting, but should rise to state a motion, or put a question to the assembly.

Sect. II. The Recording Officer.

31. The principal duties of this officer consist in taking notes of all the proceedings, and in making true entries in his journal of all "the things done and past" in the assembly; but he is not, in general, required to take minutes of "particular men's speeches," or to make entries of things merely proposed or moved, without coming to a vote. He is to enter what is done and past, but not what is said or moved. This is the rule in legislative assemblies. In others, though the spirit of the rule ought to be observed, it is generally expected of the secretary, that his record shall be both a journal and in some sort a report of the proceedings.

32. It is also the duty of the secretary to read all papers, &c., which may be ordered to be read; to call the roll of the assembly, and take note of those who are absent, when a call is ordered; to call the roll and note the answers of the members, when a question is taken by yeas and nays; to notify committees of their appointment and of the business referred to them; and to authenticate by his signature (sometimes alone and sometimes in

conjunction with the president) all the acts, orders, and proceedings of the assembly.

33. The clerk is also charged with the custody of all the papers and documents of every description, belonging to the assembly, as well as the journal of its proceedings, and is to let none of them be taken from the table by any member or other person, without the leave or order of the assembly. [The secretary, by the consent of a majority ascertained by motion, question, or vote, may enter the *protests* of members against any measure, and their reasons therefor, upon the journal. In some of the States, this right of members of legislative bodies is secured and regulated by constitutional provision, but the right is admitted in all deliberative assemblies by rule, vote, or otherwise.—Ed].

34. When but a single secretary or clerk is appointed, his place can only be supplied, during his absence, by the appointment of some one to act *pro tempore*. When several persons are appointed, this inconvenience is not likely to occur.

35. The clerk should stand while reading or calling the assembly.

CHAPTER III.

OF THE RIGHTS AND DUTIES OF THE MEMBERS.

36. The rights and duties of the members of a deliberative assembly, as regards one another, are founded in and derived from the principle of their absolute equality among themselves. Every member, however humble he may be, has the same right with every other, to submit his propositions to the assembly,—to explain and recommend them in discussion,—and to have them patiently examined and deliberately decided upon by the assembly; and, on the other hand, it is the duty of every one so to conduct himself, both in debate, and in his general deportment in the assembly, as not to obstruct any other member, in the enjoyment of his equal rights. The rights and duties of the members require to be explained only in reference to words spoken in debate (whether spoken of a member or otherwise) and to general deportment. The first will be most conveniently noticed in the chapter on debate; the other will be considered in this place.

37. The observance of decorum, by the members of a deliberative assembly, is not only due to themselves and to one another, as gentlemen assembled together to deliberate on matters of common importance and interest, but is also essential to the regular and satisfactory proceeding of such an assembly. The rules on this subject, though generally laid down with reference to decorum in debate, are equally applicable whether the assembly be at the time engaged in debate, or not; and, therefore, it may be stated, generally, that no member is to disturb another, or the assembly itself, by hissing, coughing, or spitting; by speaking or whispering to other members; by standing up to the interruption of others; by passing between the presiding officer and a member speaking; going across the assembly room, or walking up and down in it; taking books or papers from the table, or writing there.

38. All these breaches of decorum are doubtless aggravated by being committed while the assembly is engaged in debate, though equally contrary to the rules of propriety, under any other circumstances. Assaults, by one member upon another,—threats,

— challenges, — affrays, &c., are also high breaches of decorum.

39. It is also a breach of decorum for a member to come into the assembly room with his head covered, or to remove from one place to another with his hat on, or to put his hat on in coming in or removing, or, until he has taken his seat; and, in many assemblies, especially those which consist of a small number of members, it is not the custom to have the head covered at all.

40. In all instances of irregular and disorderly deportment, it is competent for every member, and is the special duty of the presiding officer, to complain to the assembly, or to take notice of the offence, and call the attention of the assembly to it. When a complaint of this kind is made by the presiding officer, he is said to *name* the member offending; that is, he declares to the assembly, that such a member, calling him by name, is guilty of certain irregular or improper conduct. The member, who is thus charged with an offence against the assembly, is entitled to be heard in his place in exculpation, and is then to withdraw. Being withdrawn, the presiding officer states the offence committed, and the

assembly proceeds to consider of the degree and amount of punishment to be inflicted. The assembly may allow the member complained of to remain, when he offers to withdraw; or, on the other hand, it may require him to withdraw, if he do not offer to do so of his own accord. The proceedings are similar, when the complaint is made by a member, except that the offence is stated by such member, instead of being stated by the presiding officer.

41. No member ought to be present in the assembly, when any matter or business concerning himself is debating; nor, if present, by the indulgence of the assembly, ought he to vote on any such question. Whether the matter in question concern his private interest, or relate to his conduct as a member,—as for a breach of order, or for matter arising in debate, —as soon as it is fairly before the assembly, the member is to be heard in exculpation and then to withdraw, until the matter is settled. If, notwithstanding, a member should remain in the assembly and vote, his vote may and ought to be disallowed; it being contrary, not only to the laws of decency, but to the fundamental principle of the social compact, that a man should sit and act as a judge in his own case.

42. The only punishments, which can be inflicted upon its members by a deliberative assembly of the kind now under consideration, consist of reprimanding,—exclusion from the assembly,—a prohibition to speak or vote, for a specified time,—and expulsion; to which are to be added such other forms of punishment, as by apology, begging pardon, &c., as the assembly may see fit to impose, and to require the offender to submit to, on pain of expulsion.

CHAPTER IV.

OF THE INTRODUCTION OF BUSINESS.

43. The proceedings of a deliberative assembly, in reference to any particular subject, are ordinarily set in motion, in the first instance, by some one of the members either presenting a communication from persons not members, or himself submitting a proposition to the assembly.

44. Communications made to the assembly are of two kinds, namely, those which are merely for its information in matters of fact,

and those which contain a request for some action on the part of the assembly, either of a general nature, or for the benefit of an individual. The latter only, as they alone constitute a foundation for future proceedings, require to be noticed.

45. Propositions made by members are drawn up and introduced, by motion, in the form which they are intended by the mover to bear, as orders, resolutions, or votes, if they should be adopted by the assembly. These propositions, of whatever nature they may be, are usually denominated motions, until they are adopted; they then take the name which properly belongs to them.

46. When a member has occasion to make any communication whatever to the assembly, —whether to present a petition or other paper, or to make or second a motion of any kind, or merely to make a verbal statement,—as well as when one desires to address the assembly in debate, he must in the first place, as the expression is, "obtain the floor" for the purpose he has in view. In order to do this, he must rise in his place,* and, standing un-

* In the house of representatives of Massachusetts, where each member's seat is regularly assigned to him, and

covered, address himself to the presiding officer, by his title; the latter, on hearing himself thus addressed, calls to the member by his name; and the member may then, but not before, proceed with his business.

47. If two or more members rise and address themselves to the presiding officer, at the same time, or nearly so, he should give the floor to the member, whose voice he first heard. If his decision should not be satisfactory, any member may call it in question, saying that in his opinion such a member (not the one named) was first up, and have the sense of the assembly taken thereon, as to which of the members should be heard. In this case, the question should be first taken upon the name of the member announced by the presiding officer; and, if this question should be decided in the negative, then upon the name of the member for whom the floor was claimed in opposition to him.

48. The mode of proceeding upon such communications from persons not members, as are above alluded to, may be explained by

numbered, it has been found useful, in deciding upon the claims of several competitors for the floor, to prefer one who rises in his place, to a member who addresses the speaker from the area, the passageways, or the seat of any other member.

that adopted on the presentation of a petition, which may be considered as the representative of the whole class to which it belongs.

49. A petition, in order to be received, should be subscribed by the petitioner himself, with his own hand, either by name or mark, except in case of inability from sickness, or because the petitioner is attending in person; and should be presented or offered, not by the petitioner himself, but by some member to whom it is intrusted for that purpose.

50. The member, who presents a petition, should previously have informed himself of its contents, so as to be able to state the substance of it, on offering it to the assembly, and also to be prepared to say, if any question should be made, that in his judgment it is couched in proper language, and contains nothing intentionally disrespectful to the assembly.

51. Being thus prepared, the member rises in his place, with the petition in his hand, and informs the assembly that he has a certain petition, stating the substance of it, which he thereupon presents or offers to the assembly, and, at the same time moves (which, however, may be done by any other member) that it

be received; this motion being seconded, the question is put whether the assembly will receive the petition or not. This is the regular course of proceeding; but, in practice there is seldom any question made on receiving a petition; the presiding officer usually taking it for granted, that there is no objection to the reception, unless it be stated. If, however, any objection is made to a petition, before it has been otherwise disposed of, the presiding officer ought to retrace his steps and require a motion of reception to be regularly made and seconded.

52. If the question of reception is determined in the affirmative, the petition is brought up to the table by the member presenting it; and is there read as of course by the clerk. It is then regularly before the assembly, to be dealt with as it thinks proper; the usual course being either to proceed to consider the subject of it immediately, or to assign some future time for its consideration, or to order it to lie on the table for the examination and consideration of the members individually.

53. Whenever a member introduces a proposition of his own, for the consideration of

the assembly, he puts it into the form he desires it should have, and then moves that it be adopted as the resolution, order, or vote of the assembly. If this proposition so far meets the approbation of other members, that one of them rises in his place and seconds it, it may then be put to the question; and the result, whether affirmative or negative, becomes the judgment of the assembly.

54. A motion must be submitted in writing; otherwise the presiding officer will be justified in refusing to receive it; he may do so, however, if he pleases, and is willing to take the trouble himself to reduce it to writing. This rule extends only to principal motions, which, when adopted, become the act and express the sense of the assembly; but not to subsidiary or incidental motions* which merely enable the assembly to dispose of the former in the manner it desires, and which are always in the same form. In the case of a motion to amend, which is a subsidiary motion, the rule admits of an exception, so far as regards the insertion of additional words, which, as well as the principal motion, must be in writing.

* Such as, to adjourn,—lie on the table,—for the previous question,—for postponement,—commitment, &c.

55. A motion must also be seconded, that is, approved by some one member, at least, expressing his approval by rising and saying, that he seconds the motion; and if a motion be not seconded, no notice whatever is to be taken of it by the presiding officer; though, in practice, very many motions, particularly those which occur in the ordinary routine of business, are admitted without being seconded. This rule applies as well to subsidiary as principal motions. The seconding of a motion seems to be required, on the ground, that the time of the assembly ought not to be taken up by a question, which, for any thing that appears, has no one in its favor but the mover. There are some apparent exceptions to this rule, which will be stated hereafter, in those cases, in which one member alone has the right of instituting or giving direction to a particular proceeding; and an actual exception is sometimes made by a special rule, requiring certain motions to be seconded by more than one member.

56. When a motion has been made and seconded, it is then to be stated by the presiding officer to the assembly, and thus becomes a question for its decision; and, until so stated,

it is not in order for any other motion to be made, or for any member to speak to it; but, when moved, seconded, and stated from the chair, a motion is in the possession of the assembly, and cannot be withdrawn by the mover, but by special leave of the assembly, which must be obtained by a motion made and seconded as in other cases. [In the British, House of Commons, a motion must be reduced to writing by the mover, and delivered to the Speaker, who, when it has been seconded, (a seconder is not required in the House of Lords), puts it to the House; it cannot then be withdrawn without leave of the House. When an amendment is proposed to a question, the original motion cannot be withdrawn till the amendment has been either withdrawn or negatived. An amendment is properly such an alteration of a motion by striking out or adding words, or both, as may enable members to vote for it who would not have done so otherwise.

In this country the practice has become less strict since Mr. Cushing wrote, "*A motion can be withdrawn, by the mover, or modified in phraseology, at any time before a decision or amendment by the assembly.*" After a *vote* on

any amendment offered to it, it cannot be withdrawn or modified except by consent of a majority of the assembly "obtained by a motion made and seconded as in other cases." [See *Par.* 92.—Ed.]

57. When a motion is regularly before the assembly, it is the duty of the presiding officer to state it, if it be not in writing, or to cause it to be read, if it be, as often as any member desires to have it stated or read for his information.

58. When a motion or proposition is regularly before the assembly, no other motion can be received, unless it be one which is previous in its nature to the question under consideration, and consequently entitled to take its place for the time being, and be first decided.

CHAPTER V.

OF MOTIONS IN GENERAL.

59. When a proposition is made to a deliberative assembly, for its adoption, the proposition may be in such a form as to be put to the question, and the assembly may be in such a state as to be willing to come to a decision

upon it, at once; and when this is the case, nothing more can be necessary than to take the votes of the members, and ascertain the result. But a different state of things may and commonly does exist; the assembly may prefer some other course of proceeding to an immediate decision of the question in the form in which it is presented; and, as it is proper, that every parliamentary body should have the means of fitly disposing of every proposition which may be made to it, certain forms of question have from time to time been invented, and are now in general use, for that purpose. These forms of question may properly be called *subsidiary*, in order to distinguish them from the principal motion or question to which they relate.

60. The different states of mind, in which a proposition may be received by a deliberative assembly, and the corresponding forms of proceeding, or subsidiary motions, to which they give rise, in order to ascertain the sense of the assembly, are the following:—

First. The assembly may look upon the proposition as useless or inexpedient; and may therefore desire to suppress it, either for a time, or altogether. The subsidiary motions,

for this purpose, are the previous question, and indefinite postponement.

Second. The assembly may be willing to entertain and consider of a proposition, but not at the time when it is made; either because more information is wanted by the members individually; or because they desire further time for reflection and examination; or because the assembly is then occupied with some other matter, which has more pressing claims upon its present attention. The usual motions, under such circumstances, are postponement to some future day or time, and to lie on the table.

Third. The subject-matter of a proposition may be regarded with favor, but the form in which it is introduced may be so defeective, that a more careful and deliberate consideration, than can conveniently be given to it in the assembly itself, may be necessary to put it into a satisfactory form. In this case, it is most proper to refer the proposition to a committee.

Fourth. The proposition may be acceptable, and the form in which it is presented so far satisfactory, that the assembly may be willing to consider and act upon it, with such altera-

tions and amendments as may be thought proper. The motion adapted to this case is to amend.

61. It is not to be supposed that the subsidiary motions above specified are the only ones that have at any time been adopted or used; or that it is not competent to a deliberative assembly to frame new motions at pleasure; but these are the forms in most common use, and are entirely sufficient for all practical purposes.* Neither is it to be supposed, that these motions are always applied strictly to the cases to which they most appropriately belong; several of them are frequently used to effect purposes, for which others would be more proper. These misapplications will be taken notice of, under the heads of the several motions.

* It is usual, in legislative assemblies, to provide by a special rule, both as to the particular motions to be used, and the order in which they may be made. Thus, the rule in the house of representatives of congress, (which is also adopted in the house of representatives of Massachusetts,) is, that, "when a question is under debate, no motion shall be received, but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit, to amend, to postpone indefinitely, which several motions shall have precedence in the order in which they are arranged."

CHAPTER VI.

OF MOTIONS TO SUPPRESS.

62. When a proposition is moved, which it is supposed, may be regarded by the assembly as useless or inexpedient, and which it may therefore be desirous to get rid of, such proposition may be suppressed for a time by means of the previous question, or altogether by a motion for indefinite postponement.

SECT. I. PREVIOUS QUESTION.

63. The original and proper parliamentary use of the previous question being, as above stated, the suppression of a main question, it seems proper to consider it as one of the subsidiary motions for that purpose; although, in this country, it has been perverted to a wholly different use, namely, the suppression of debate. This consideration, in connection with the difficulty of the subject, and the importance of a correct understanding of it, makes it proper to devote more room to the

previous question, than needs to be given to most of the other subsidiary motions. It will first be considered according to its original use and intention; and, afterwards, as used in this country.

64. There are several motions, which give rise to questions previous in their nature to other questions to which they relate; but the term *previous* has been applied exclusively to a motion denominated the *previous question*, which has for its object the suppression of a principal motion or question. This motion was introduced into the house of commons in England, more than two centuries ago, for the purpose of suppressing subjects of a delicate nature, relating to high personages, or the discussion of which might call forth observations of an injurious tendency. When first made use of, the form of the motion was, *shall the main question be put?* and the effect of a decision of it in the negative was to suppress the main question for the whole session. The form of it was afterwards changed to that which it has at present, namely, *shall the main question be now put?* and the effect of a negative decision of it now is to suppress the main question for the residue of the day only. The

operation of this motion, in suppressing the question to which it is applied, results from the principle, that no further consideration or discussion can regularly be had of a subject, which it has been decided shall not be put to the question; and, therefore, when on the motion of the previous question, it has been decided, that the principal question shall not now be put, that question is disposed of for the day, and cannot be renewed until the next or some succeeding day. This is the purpose for which the previous question was originally invented, and for which it is still used in the British parliament.

65. But the previous question may be decided in the affirmative, as well as the negative, that is, that the main question shall now be put; in which case, that question is to be put immediately, without any further debate, and in the form in which it then exists. This operation of the previous question, when decided affirmatively, has led to the use of it for the purpose of suppressing debate on a principal question, and coming to a vote upon it immediately; and this is ordinarily the only object of the previous question as made use of in the legislative assemblies of the United

States.* The operation of a negative decision is different in different assemblies; in some, as, for example, in the house of representatives of congress, it operates to dispose of the principal or main question by suppressing or removing it from before the house for the day; but in others, as in the house of representatives of Massachusetts, and in the house of assembly of New York, (in the former by usage only, and in the latter by a rule,) the effect of a negative decision of the previous question is to leave the main question under debate for the residue of the sitting, unless sooner disposed of by taking the question, or in some other manner.

66. In England, the previous question is used only for suppressing a main question; the object of the mover is to obtain a decision of it in the negative; and the effect of such a

* Mr. Jefferson (Manual, § xxxiv.) considers this extension of the previous question as an abuse. He is of opinion that "its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible." Notwithstanding this suggestion, however, the use of the previous question, as above stated, has become so firmly established, that it cannot now be disturbed or unsettled.

decision, though in strictness only to suppress the question for the day, is, practically and by parliamentary usage, to dispose of the subject altogether. In this country, the previous question is used chiefly for suppressing debate on a main question; the object of the mover is to obtain a decision of it in the affirmative; and the effect of a decision the other way, though in some assemblies operating technically to suppress the main question for the day only, is, in general, merely to suspend the taking of the question for that day; either leaving the debate to go on during the residue of the day, or the subject to be renewed on the next or some other day. The operation of an affirmative decision is the same, in both countries, namely, the putting of the main question immediately, and without further debate, delay, or consideration.

Sect. II. Indefinite Postponement.

67. In order to suppress a question altogether, without coming to a direct vote upon it, in such a manner that it cannot be renewed, the proper motion is for indefinite postponement; that is, a postponement or adjournment

of the question, without fixing any day for resuming it. The effect of this motion, if decided in the affirmative, is to quash the proposition entirely; as an indefinite adjournment is equivalent to a dissolution, or the continuance of a suit, without day, is a discontinuance of it. A negative decision has no effect whatever.

[This motion cannot be amended. It cannot be moved while the motions to commit or for the previous question are pending. As its effect is to "quash the proposition entirely," it necessarily brings up the whole subject for discussion, in order that its friends may allege reasons for coming to a direct vote upon it; for if the motion to indefinitely postpone prevails, the measure proposed cannot be renewed during the session.—Ed.]

CHAPTER VII.

OF MOTIONS TO POSTPONE.

68. If the assembly is willing to entertain and consider a question, but not at the time when it is moved, the proper course is either to postpone the subject to another day, or to order it to lie on the table.

69. When the members individually want more information than they possess, at the time a question is moved, or desire further time for reflection and examination, the proper motion is, to postpone the subject to such future day as will answer the views of the assembly.

70. This motion is sometimes used improperly, to get rid of a proposition altogether, as would be done by an indefinite postponement. This is effected by fixing upon a day, which, according to the common course of things, will not arrive until after the assembly has been brought to a close. But a motion, worded in this manner, is precisely equivalent to a motion for indefinite postponement, and should be so considered and treated.

71. If the assembly has something else before it, which claims its present attention, and is therefore desirous to postpone a particular proposition, until that subject is disposed of, such postponement may be effected by means of a motion that the matter in question lie on the table. If this motion prevails, the subject so disposed of may be taken up, at any time afterwards, and considered, when it may suit the convenience of the assembly.

72. This motion is also sometimes made use of for the final disposition of a subject; and it always has that effect, when no motion is afterwards made to take it up.

[In Congress, as well as in other deliberative bodies, debate is not allowed on the motions to postpone to a day certain, or to lie on the table; for the effect of these motions is only to defer measures temporarily, which may be fully discussed when the proper time arrives. A member may speak strictly to the motion; but not as to the merits of the question postponed. The motion may be amended by substituting one day for another. The motion to lie on the table is not subject to amendment.—Ed.]

CHAPTER VIII.

OF MOTIONS TO COMMIT.

73. The third case for the use of a subsidiary motion, as already stated, occurs, when the subject-matter of a proposition is regarded with favor, but the form in which it is introduced is so defective, that a more careful and

deliberate consideration is necessary, than can conveniently be given to it in the assembly itself, in order to put it into a satisfactory form. The course of proceeding then is, to refer the subject to a committee; which is called a commitment, or, if the subject has already been in the hands of a committee, a recommitment.

74. If there is a standing committee of the assembly, whose functions embrace the subject in question, the motion should be to refer it to that committee; if there is no such committee, then the motion should be to refer to a select committee. If it is a matter of doubt, whether a particular standing committee is appropriate or not, and propositions are made for a reference to that committee, and also for a reference to a select committee, the former proposition should be first put to the question.

75. When a subject is referred or recommitted, the committee may be instructed or ordered by the assembly, as to any part or the whole of the duties assigned them; or the subject may be left with them without instructions. In the former case, the instructions must be obeyed, of course; in the latter, the committee have full power over the matter, and may report upon it, in any

manner they please, provided they keep within the recognized forms of parliamentary proceedings.

76. A part only of a subject may be committed, without the residue; or different parts may be committed to different committees.

77. A commitment with instructions is sometimes made use of, as a convenient mode of procuring further information, and, at the same time, of postponing the consideration of a subject to a future though uncertain day.

[The merits of the proposition are not open to discussion, for the reason stated in *note, par.* 72, unless instructions are added to the motion to commit—then the subject matter may be debated.—Ed.]

CHAPTER IX.

OF MOTIONS TO AMEND.

78. The last case, for the introduction of subsidiary motions, is when the assembly is satisfied with the subject-matter of a proposi-

tion, but not with the form of it, or with all its different parts, or desires to make some addition to it. The course of proceeding then is, to bring the proposition into the proper form, and make its details satisfactory, by means of amendments, or of certain proceedings of a similar character, and having the same general purpose in view. The latter will be first considered.

Sect. I. Division of a Question.

79. When a proposition or motion is complicated, that is, composed of two or more parts, which are so far independent of each other, as to be susceptible of division into several questions, and it is supposed that the assembly may approve of some but not of all these parts, it is a compendious mode of amendment, to divide the motion into separate questions, to be separately voted upon and decided by the assembly. This division may take place by the order of the assembly, on a motion regularly made and seconded for the purpose.

80. When a motion in thus divided, it becomes a series of questions, to be considered

and treated each by itself, as an independent proposition, in the order in which they stand; and when they have all been gone through with and decided, the result will be the same, as if motions to amend by striking out the several parts had been made and put to the question. When a motion for a division is made, the mover ought to specify in his motion the manner in which he proposes to make the division; and this motion, like every other of the nature of an amendment, is itself susceptible of amendment.

81. It is sometimes asserted, that it is the right of every individual member to have a complicated question (provided it is susceptible of division) divided into its several parts, and a question put separately on each, on his mere demand, and without any motion or any vote of the assembly for that purpose. But this is a mistake; there is no such rule of parliamentary proceeding; a complicated question can only be separated by moving amendments to it in the usual manner, or by moving for a division of it in the manner above stated.

82. It is not unusual, however, for a deliberative assembly to have a rule providing for

the division of a complicated question (provided it is susceptible of division) into its several parts, upon the demand of a member. When this is the case, it is for the presiding officer (subject of course to the revision of the assembly) to decide, when the division of a motion is demanded, first, whether the proposition is susceptible of division, and, secondly, into how many and what parts it may be divided.

83. A proposition, in order to be divisible, must comprehend points so distinct and entire, that if one or more of them be taken away, the others may stand entire and by themselves; but a qualifying paragraph, as, for example, an exception or a proviso, if separated from the general assertion or statement to which it belongs, does not contain an entire point or proposition.

Sect. II. Filling Blanks.

84. It often happens, that a proposition is introduced with blanks purposely left by the mover to be filled by the assembly, either with times and numbers, or with provisions analogous to those of the proposition itself.

In the latter case, blanks are filled in the same way, that other amendments by the insertion of words are made. In the former, propositions to fill blanks are not considered as amendments to the question, but as original motions, to be made and decided before the principal question.

85. When a blank is left to be filled with a time or number, motions may be made for that purpose, and the question taken on each by itself, and before another is made; or several motions may be made and pending before any of them are put to the question. This last mode of proceeding, which is the most usual as well as convenient, requires that the several propositions should be arranged, and the question taken on them, in such order as will the soonest and with the most certainty enable the assembly to come to an agreement.

86. In determining upon the order to be adopted, the object is not to begin at that extreme, which and more being within every man's wish, no one can vote against it, and, yet, if it should be carried in the affirmative, every question for more would be precluded; but, at that extreme, which will be likely to

unite the fewest, and then to advance or recede, until a number or time is reached, which will unite a majority.

87. Hence, when several different propositions are made for filling blanks with a time or number, the rule is, that if the *larger* comprehends the *lesser*, as in a question to what day a postponement shall take place,—the number of which a committee shall consist,—the amount of a fine to be imposed,—the term of an imprisonment,—the term of irredeemability of a loan,—or the *terminus in quem* in any other case, the question must begin *a maximo*, and be first taken upon the greatest or farthest, and so on to the least or nearest, until the assembly comes to a vote: But, if the *lesser* includes the *greater*, as in questions on the limitation of the rate of interest,—on the amount of a tax,—on what day the session of a legislative assembly shall be closed, by adjournment,—on what day the next session shall commence,—or the *terminus a quo* in any other case, the question must begin *a minimo*, and be first taken on the least or nearest, and so on to the greatest or most remote, until the assembly comes to a vote.*

* The above is the rule as laid down by Mr Jefferson

Sect. III. Addition,—Separation,—Transposition.

88. When the matters contained in two separate propositions might be better put into one, the mode of proceeding is to reject one of them, and then to incorporate the substance of it with the other by way of amendment. A better mode, however, if the business of the assembly will admit of its being adopted, is to refer both propositions to a committee, with instructions to incorporate them together in one.

89. So, on the other hand, if the matter of one proposition would be more properly distributed into two, any part of it may be struck out by way of amendment, and put into the form of a new and distinct proposition. But in this, as in the former case, a better mode would generally be to refer the subject to a committee.

90. In like manner, if a paragraph or sec-

(§ 33), and holds where it is not superseded by a special rule, which is generally the case in our legislative assemblies; as, for example, in the senate of the United States, the rule is, that in filling blanks, the LARGEST sum and LONGEST time shall be first put. In the house of commons, in England, the rule established by usage is, that the SMALLEST sum and the LONGEST time shall be first put.

tion requires to be transposed, a question must be put on striking it out where it stands, and another for inserting it in the place desired.

91. The numbers prefixed to the several sections, paragraphs, or resolutions, which constitute a proposition, are merely marginal indications, and no part of the text of the proposition itself; and, if necessary, they may be altered or regulated by the clerk, without any vote or order of the assembly.

Sect. IV. Modification or Amendment by the Mover.

92. The mover of a proposition is sometimes allowed to modify it, after it has been stated as a question by the presiding officer; but, as this is equivalent to a withdrawal of the motion, in order to substitute another in its place; and, since, as has already been seen, [Par. 36. *note*] a motion regularly made, seconded, and proposed, cannot be withdrawn without leave; it is clear, that the practice alluded to rests only upon general consent; and, that, if objected to, the mover of a proposition must obtain the permission

of the assembly, by a motion and question, for the purpose, in order to enable him to modify his proposition.

93. So, too, when an amendment has been regularly moved and seconded, it is sometimes the practice for the mover of the proposition to which it relates to signify his consent to it, and for the amendment to be thereupon made, without any question being taken upon it by the assembly. As this proceeding, however, is essentially the same with that described in the preceding paragraph, it, of course, rests upon the same foundation, and is subject to the same rule.

Sect. V. General Rules relating to Amendments.

94. All amendments, of which a proposition is susceptible, so far as form is concerned, may be effected in one of three ways, namely, either by inserting or adding certain words; or by striking out certain words; or by striking out certain words, and inserting or adding others. These several forms of amendment are subject to certain general rules, which,

being equally applicable to them all, require to be stated beforehand.

95. *First Rule.* When a proposition consists of several sections, paragraphs, or resolutions, the natural order of considering and amending it is to begin at the beginning, and to proceed through it in course by paragraphs; and when a latter part has been amended, it is not in order to recur back, and make any alteration or amendment of a former part.

96. *Second Rule.* Every amendment, which can be proposed, whether by striking out, or inserting, or striking out and inserting, is itself susceptible of amendment; but there can be no amendment of an amendment to an amendment; this would be such a piling of questions one upon another, as would lead to great embarrassment; and as the line must be drawn somewhere, it has been fixed by usage after the amendment to the amendment. The object, which is proposed to be effected by such a proceeding, must be sought by rejecting the amendment to the amendment, in the form in which it is proposed, and then moving it again in the form in which it is wished to be amended, in which it is only an amendment to an amendment; and in order

to accomplish this, he who desires to amend an amendment should give notice, that, if rejected, in the form in which it is presented, he shall move it again in the form in which he desires to have it adopted.

97. Thus, if a proposition consists of A B, and it is proposed to amend by inserting C D, it may be moved to amend the amendment by inserting E F; but it cannot be moved to amend this amendment, as, for example, by inserting G. The only mode, by which this can be reached, is to reject the amendment in the form in which it is presented, namely, to insert E F, and to move it in the form in which it is desired to be amended, namely, to insert E G F.

98. *Third Rule.* Whatever is agreed to by the assembly, on a vote, either adopting or rejecting a proposed amendment, cannot be afterwards altered or amended.

99. Thus, if a proposition consists of A B, and it is moved to insert C; if the amendment prevail, C cannot be afterwards amended, because it has been agreed to in that form; and, so, if it is moved to strike out B, and the amendment is rejected, B cannot afterwards be amended, because a vote against striking

it out is equivalent to a vote agreeing to it as it stands.

100. *Fourth Rule.* Whatever is disagreed to by the assembly, on a vote, cannot be afterwards moved again. This rule is the converse of the preceding, and may be illustrated in the same manner.

101. Thus, if it is moved to amend A B by inserting C, and the amendment is rejected, C cannot be moved again; or, if it is moved to amend A B by striking out B, and the amendment prevails, B cannot be restored; because, in the first case, C, and, in the other, B, have been disagreed to by a vote.

102. *Fifth Rule.* The inconsistency or incompatibility of a proposed amendment with one which has already been adopted, is a fit ground for its rejection by the assembly, but not for the suppression of it by the presiding officer, as against order; for, if questions of this nature were allowed to be brought within the jurisdiction of the presiding officer, as matters of order, he might usurp a negative on important modifications, and suppress or embarrass instead of subserving the will of the assembly.

Sect. VI. Amendments by striking out.

103. If an amendment is proposed by striking out a particular paragraph or certain words, and the amendment is rejected, it cannot be again moved to strike out the same words or a part of them; but it may be moved to strike out the same words with others, or to strike out a part of the same words with others, provided the coherence to be struck out be so substantial, as to make these, in fact, different propositions from the former.

104. Thus, if a proposition consist of A B C D, and it is moved to strike out B C; if this amendment is rejected, it cannot be moved again; but it may be moved to strike out A B, or A B C, or B C D or C D.

105. If an amendment by striking out is agreed to, it cannot be afterwards moved to insert the same words struck out or a part of them; but it may be moved to insert the same words with others, or a part of the same words with others, provided the coherence to be inserted make these propositions substantially different from the first.

106. Thus, if the proposition A B C D is

amended by striking out B C, it cannot be moved to insert B C again; but it may be moved to insert B C with other words, or B with others, or C with others.

107. When it is proposed to amend by striking out a particular paragraph, it may be moved to amend this amendment, in three different ways, namely, either by striking out a part only of the paragraph, or by inserting or adding words, or by striking out and inserting.

108. Thus, if it is moved to amend the proposition A B C D, by striking out B C, it may be moved to amend this amendment by striking out B only or C only, or by inserting E, or by striking out B or C, and inserting E.

109. In the case of a proposed amendment by striking out, the effect of voting upon it, whether it be decided in the affirmative or negative according to the third and fourth rules above mentioned, renders it necessary for those who desire to retain the paragraph to amend it, if any amendment is necessary, before the vote is taken on striking out; as, if struck out, it cannot be restored, and, if retained, it cannot be amended.

110. As an amendment must necessarily be

put to the question before the principal motion; so the question must be put on an amendment to an amendment before it is put on the amendment; but, as this is the extreme limit to which motions may be put upon one another, there can be no precedence of one over another among amendments to amendments; and, consequently, they can only be moved, one at a time, or, at all events, must be put to the question in the order in which they are moved.

111. When a motion for striking out words is put to the question, the parliamentary form always is, whether the words *shall stand as part* of the principal motion, and not whether they *shall be struck out*. The reason for this form of stating the question probably is, that the question may be taken in the same manner on a part as on the whole of the principal motion; which would not be the case, if the question was stated on striking out; inasmuch as the question on the principal motion, when it comes to be stated, will be on agreeing to it, and not on striking out or rejecting it. Besides, as an equal division of the assembly would produce a different decision of the question, according to the manner of stating it, it

might happen, if the question on the amendment was stated on striking out, that the same question would be decided both affirmatively and negatively by the same vote.*

[This is invariably the form in the British Parliament. In the United States the question is always put, as Mr. Cushing states in the following note, "Shall the words be stricken out of the amendment?" Whether this question is decided in the affirmative or negative, the amendment is proposed to the main proposition in the form which this vote gives it.—Ed.]

112. On a motion to amend by striking out certain words, the manner of stating the question is, first to read the passage proposed to be amended, as it stands; then the words proposed to be struck out; and, lastly, the whole passage as it will stand if the amendment is adopted.

Sect. VII. Amendments by inserting.

113. If an amendment is proposed by in-

* The common, if not the only, mode of stating the question, in the legislative assemblies of this country, is on "striking out."

serting or adding a paragraph or words, and the amendment is rejected, it cannot be moved again to insert the same words or a part of them; but it may be moved to insert the same words with others, or a part of the same words with others, provided the coherence really make them different propositions.

114. Thus, if it is moved to amend the proposition A B by inserting C D, and the amendment is rejected, C D cannot be again moved; but it may be moved to insert C E, or D E, or C D E.

115. If it is proposed to amend by inserting a paragraph, and the amendment prevails, it cannot be afterwards moved to strike out the same words or a part of them; but it may be moved to strike out the same words with others, * or a part of the same words with others, provided the coherence be such as to make these propositions really different from the first.

116. Thus, if in the example above supposed, the amendment prevails, and C D is inserted it cannot be afterwards moved to

* This is the common case of striking out a paragraph, after having amended it by inserting words.

strike out C D, but it may be moved to strike out A C or A C D, or D B, or C D B.

117. When it is proposed to amend by inserting a paragraph, this amendment may be amended in three different ways, namely, either by striking out a part of the paragraph; or by inserting something into it; or by striking out and inserting.

118. Thus, if it is proposed to amend A B by inserting C D, this amendment may be amended either by striking out C or D, or inserting E, or by striking out C or D and inserting E.

119 When it is proposed to amend by inserting a paragraph, those who are in favor of the amendment should amend it, if necessary, before the question is taken; because if it is rejected, it cannot be moved again, and, if received, it cannot be amended.

120. There is no precedence of one over another in amendments to amendments by inserting, any more than in amendments to amendments by striking out.

121. On a motion to amend by inserting a paragraph, the manner of stating the question is, first, to read the passage to be amended, as it stands; then the words proposed to be in-

serted; and lastly, the whole passage as it will stand if the amendment prevails.

Sect. VIII. Amendments by striking out and inserting.

122. The third form of amending a proposition, namely, by striking out certain words and inserting others in their place, is, in fact, a combination of the other two forms; and may accordingly be divided into those two forms, either by a vote of the assembly, or on the demand of a member, under a special rule to that effect.*

123. If the motion is divided, the question is first to be taken on striking out; and if that is decided in the affirmative, then, on inserting; but if the former is decided in the negative, the latter falls, of course. On a division, the proceedings are the same, in reference to each branch of the question, beginning with the striking out, as if each branch had been moved by itself.

Mr. Jefferson (§ xxxv.) says, "the question, if desired, is then to be divided," &c.; but, as he makes no exception of a motion to strike out and insert, when treating of the subject of division, and does not here state it as an exception, he undoubtedly supposes the division in this case to be made in the regular and usual manner.

124. If the motion to strike out and insert is put to the question undivided, and is decided in the negative, the same motion cannot be made again ; but, it may be moved to strike out the same words, and, 1, insert nothing ; 2, insert other words ; 3, insert the same words with others ; 4, insert a part of the same words with others ; 5, strike out the same words with others, and insert the same ; 6, strike out a part of the same words with others, and insert the same ; 7, strike out other words and insert the same ; and, 8, insert the same words, without striking out any thing.

125. If the motion to strike out and insert is decided in the affirmative, it cannot be then moved to insert the words struck out or a part of them, or to strike out the words inserted, or a part of them ; but, it may be moved, 1, to insert the same words with others ; 2, to insert a part of the same words with others ; 3, to strike out the same words with others ; or, 4, to strike out a part of the same words with others.

126. When it is proposed to amend by striking out and inserting, this amendment may be amended in three differennt ways in the paragraph proposed to be struck out, and

also in the paragraph proposed to be inserted, namely, by striking out, or inserting, or striking out and inserting. And those who are in favor of either paragraph must amend it, before the question is taken, for the reasons already stated, namely, that, if decided in the affirmative, the part struck out cannot be restored, nor can the part inserted be amended; and, if decided in the negative, the part proposed to be struck out cannot be amended, nor can the paragraph proposed to be inserted be moved again.

127. On a motion to amend, by striking out certain words and inserting others, the manner of stating the question is first to read the whole passage to be amended, as it stands; then the words proposed to be struck out; next those to be inserted; and, lastly, the whole passage as it will stand when amended.

Sect. IX. Amendments changing the Nature of a Question.

128. The term amendment is in strictness applicable only to to those changes of a proposition, by which it is improved, that is, rendered more effectual for the purpose which it has in

view, or made to express more clearly and definitely the sense which it is intended to expres. Hence it seems proper, that those only should undertake to amend a proposition, who are friendly to it; but this is by no means the rule; when a proposition is regularly moved and seconded, it is in the possession of the assembly, [*Par* 56, 92, *V.*] and cannot be withdrawn but by its leave; it has then become the basis of the future proceedings of the assembly, and may be put into any shape, and turned to any purpose, that the assembly may think proper.

129. It is consequently allowable to amend a proposition in such a manner as entirely to alter its nature, and to make it bear a sense different from what it was originally intended to bear; so that the friends of it, as it was first introduced, may themselves be forced to vote against it, in its amended form.

130. This mode of proceeding is sometimes adopted for the purpose of defeating a proposition, by compelling its original friends to unite with those who are opposed to it, in voting for its rejection. Thus, in the British House of Commons, Jan. 29, 1765, a resolution being moved, "That a general warrant for

apprehending the authors, printers, or publishers of a libel, together with their papers, is not warranted by law, and is an high violation of the liberty of the subject: "—it was moved to amend this motion by prefixing the following paragraph, namely: "That in the particular case of libels, it is proper and necessary to fix, by a vote of this house only, what ought to be deemed the law in respect of general warrants; and, for that purpose, at the time when the determination of the legality of such warrants, in the instance of a most seditious and treasonable libel, is actually depending before the courts of law, for this house to declare"—*that a general warrant for apprehending the authors, printers, or publishers of a libel, together with their papers, is not warranted by law, and is an high violation of the liberty of the subject.* The amendment was adopted, after a long debate, and then the resolution as amended was immediately rejected without a division.*

* This mode of defeating a measure, however, is not always successful. In 1780, Mr. Dunning having made a motion, in the house of commons, "that, in the opinion of this house, the influence of the crown has increased, is increasing, and ought to be diminished," Dundas, lord-advocate of Scotland, in order to defeat the motion, proposed to amend, by inserting, after the words, IN THE

131. But sometimes the nature of a proposition is changed by means of amendments, with a view to its adoption in a sense the very opposite of what it was originally intended to bear. The followimg is a striking example of this mode of proceeding. In the house of commons, April 10, 1744, a resolution was moved, declaring, "That the issuing and paying to the Duke of Aremberg the sum of forty thousand pounds, sterling, to put the Austrian troops in motion in the year 1742, was a dangerous misapplication of public money, and destructive of the rights of parliament." The object of this resolution was to censure the conduct of the ministers; and the friends of the ministry, being in a majority, might have voted directly upon the motion and rejected it. But they preferred to turn it into a resolution approving of the conduct of ministers on the occasion referred to; and it was accordingly moved to amend, by leaving out the words "a dangerous misapplication," &c. to the end of the motion, and inserting instead thereof the words, "necessary for putting the

OPINION OF THIS HOUSE, the words IT IS NOW NECESSARY TO DECLARE THAT, &c. But this amendment, instead of intimidating the friends of the original motion was at once adopted by them, and the resolution passed as amended.

said troops in motion, and of great consequence to the common cause." The amendment being adopted, it was resolved (reversing the original proposition) "That the issuing and paying to the Duke of Aremberg the sum of forty thousand pounds, to put the Austrian troops in motion, in the year 1742, was necessary for putting the said troops in motion, and of great consequence to the common cause."

132. It is a mode of defeating a proposition, somewhat similar to that above mentioned, to carry out or extend the principle of it, by means of amendments, so as to show the inconvenience, absurdity, or danger of its adoption, with such evident clearness, that it becomes impossible for the assembly to agree to it. Thus, a motion having been made in the house of commons, "for copies of all the letters written by the lords of the admiralty to a certain officer in the navy," it was moved to amend the motion by adding these words :— "which letters may contain orders, or be relative to orders, not executed, and still subsisting." This amendment being adopted, the motion as amended was unanimously rejected.

133. It will be seen, from the foregoing examples, that as the mover of a proposition

is under no restriction as to embracing incongruous matters under the same motion; so, on the other hand, the assembly may engraft upon a motion, by way of amendment, matter which is not only incongruous with, but entirely opposed to, the motion as originally introduced; and, in legislative assemblies, it is not unusual to amend a bill by striking out all after the enacting clause, and inserting an entirely new bill; or to amend a resolution by striking out all after the words "Resolved that," and inserting a proposition of a wholly different tenor

CHAPTER X.

OF THE ORDER AND SUCCESSION OF QUESTIONS.

134. It is a general rule, that, when a proposition is regularly before a deliberative assembly, for its consideration, no other proposition or motion can regularly be made or arise, so as to take the place of the former, and be first acted upon, unless it be either, *first*, a privileged question; *secondly*, a sub-

sidiary question; or, *thirdly*, an incidental question or motion.

135. All these motions take the place of the principal motion, or main question, as it is usually called, and are to be first put to the question; and, among themselves, also, there are some, which, in like manner, take the place of all the others. Some of these questions merely supersede the principal question, until they have been decided; and, when decided, whether affirmatively or negatively, leave that question as before. Others of them also supersede the principal question, until they are decided; and, when decided one way, dispose of the principal question; but, if decided the other way, leave it as before.

Sect. I. Privileged Questions.

136. There are certain motions or questions, which, on account of the superior importance attributed to them, either in consequence of a vote of the assembly, or in themselves considered, or of the necessity of the proceedings to which they lead, are entitled to take the place of any other subject or proposition, which may then be under considera-

tion, and to be first acted upon and decided by the assembly. These are called privileged questions, because they are entitled to precedence over other questions, though they are of different degrees among themselves. Questions of this nature are of three kinds, namely, *first*, motions to adjourn; *secondly*, motions or questions relating to the rights and privileges of the assembly, or of its members individually; and, *thirdly*, motions for the orders of the day.

Adjournment.

137. A motion to adjourn takes the place of all other questions whatsoever *; for, otherwise, the assembly might be kept sitting against its will, and for an indefinite time; but, in order to entitle this motion to precedence, it must be simply to "adjourn," with-

* It is commonly said, that a motion to adjourn is always in order, but this is not precisely true. The question of adjournment may, indeed, be moved repeatedly on the same day; yet, in strictness, not without some intermediate question being proposed, after one motion to adjourn is disposed of, and before the next motion is made for adjourning; as, for example, an amendment to a pending question, or for the reading of some paper. The reason of this is, that, until some other proceeding has intervened, the question already decided is the same as that newly moved.

out the addition of any particular day or time. And, as the object of this motion, when made in the midst of some other proceeding, and with a view to supersede a question already proposed, is simply to break up the sitting, it does not admit of any amendment by the addition of a particular day, or in any other manner; though, if a motion to adjourn is made, when no other business is before the assembly, it may be amended like other questions.

138. A motion to adjourn is merely, "that this assembly do now adjourn;" and, if it is carried in the affirmative, the assembly is adjourned to the next sitting day; unless it has previously come to a resolution, that, on rising, it will adjourn to a particular day; in which case, it is adjourned to that day.

139. An adjournment without day, that is, without any time being fixed for reassembling, would, in the case of any other than a legislative assembly, be equivalent to a dissolution.*

* It is quite common, when the business of a deliberative assembly has been brought to a close, to adjourn the assembly without day. A better form is to dissolve it; as an adjournment without day, if we regard the etymology of the word adjourn, is a contradiction in terms.

140. When a question is interrupted by an adjournment, before any vote or question has been taken upon it, it is thereby removed from before the assembly, and will not stand before it, as a matter of course, at its next meeting, but must be brought forward in the usual way.

Questions of Privilege.

141. The questions, next in relative importance, and which supersede all others for the time being, except that of adjournment, are those which concern the rights and privileges of the assembly, or of its individual members; as, for example, when the proceedings of the assembly are disturbed or interrupted, whether by strangers or members; or where a quarrel arises between two members; and, in these cases, the matter of privilege supersedes the question pending at the time, together with all subsidiary and incidental ones, and must be first disposed of. When settled, the question interrupted by it is to be resumed, at the point where it was suspended.

Orders of the Day.

142. When the consideration of a subject

has been assigned for a particular day, by an order of the assembly, the matter so assigned is called the order of the day for that day. If, in the course of business, as commonly happens in legislative assemblies, there are several subjects assigned for the same day, they are called the orders of the day.

143. A question, which is thus made the subject of an order for its consideration on a particular day, is thereby made a privileged question for that day; the order being a repeal, as to this special case, of the general rule as to business. If, therefore, any other proposition (with the exception of the two preceding *) is moved or arises, on the day assigned for the consideration of a particular subject, a motion for the order of the day will supersede the question first made, together with all subsidiary and incidental questions connected with it, and must be first put and decided; for if the debate or consideration of that subject were allowed to proceed, it might continue through the day and thus defeat the order.

[* *e. g.*, A motion to adjourn, and a question of privilege.]

144. But this motion, to entitle it to prece-

dence, must be for the orders generally, if there is more than one, and not for any particular one ; and, if decided in the affirmative, that is, that the assembly will now proceed to the orders of the day, they must then be read and gone through with, in the order in which they stand; priority of order being considered to give priority of right.

145. If the consideration of a subject is assigned for a particular hour on the day named, a motion to proceed to it is not a privileged motion, until that hour has arrived ; but, if no hour is fixed, the order is for the entire day and every part of it.

146. Where there are several orders of the day, and one of them is fixed for a particular hour, if the orders are taken up before that hour, they are to be proceeded with as they stand, until that hour, and then the subject assigned for that hour is the next in order ; but, if the orders are taken up at that time or afterwards, that particular subject must be considered as the first in order.

147. If the motion for the orders of the day is decided in the affirmative, the original question is removed from before the assembly, in the same manner as if it had been inter-

rupted by an adjournment, and does not stand before the assembly, as a matter of course, at its next meeting, but must be renewed in the usual way.

148. If the motion is decided in the negative, the vote of the assembly is a discharge of the orders, so far as they interfere with the consideration of the subject then before it, and entitles that subject to be first disposed of.

149. Orders of the day, unless proceeded in and disposed of on the day assigned, fall, of course, and must be renewed for some other day. It may be provided, however, by a special rule, as in the legislative assemblies of Massachusetts, that the orders for a particular day shall hold for every succeeding day, until disposed of.

[In French parliamentary procedure, "the order of the day" pure and simple, is equivalent to "laying on the table." By this method, a debate in the French Chamber, is often summarily stopped, or a subject disposed of, until the proper moment arrives, in the opinion of the Ministry, for taking it up. The American parliamentary code, on the contrary, disposes of an objectionable measure or

motion, for the time being, by "laying it on the table"—while the "order of the day" can only be called for when the day or hour for which it has been previously set down arrives.—Ed].

Sect. II. Incidental Questions.

150. Incidental questions are such as arise out of other questions, and are consequently to be decided before the questions which give rise to them. Of this nature are, *first*, questions of order; *second*, motions for the reading of papers, etc.; *third*, leave to withdraw a motion; *fourth*, suspension of a rule; and, *fifth*, amendment of an amendment.

Questions of Order.

151. It is the duty of the presiding officer of a deliberative assembly, to enforce the rules and orders of the body over which he presides, in all its proceedings; and this without question, debate, or delay, in all cases, in which the breach of order, or the departure from rule, is manifest. It is also the right of every member, taking notice of the breach of a rule,

to insist upon the enforcement of it in the same manner.

152. But, though no question can be made, as to the enforcement of the rules, when there is a breach or manifest departure from them, so long as any member insists upon their enforcement; yet questions may and do frequently arise, as to the fact of there being a breach of order, or a violation of the rules in a particular proceeding; and these questions must be decided before a case can arise for the enforcement of the rules. Questions of this kind are denominated questions of order.

153. When any question of this nature arises, in the course of any other proceeding, it necessarily supersedes the further consideration of the subject out of which it arises, until that question is disposed of; then the original motion or proceeding revives, and resumes its former position, unless it has been itself disposed of by the question of order.

154. When a question of order is raised, as it may be by any one member, it is not stated from the chair, and decided by the assembly, like other questions; but is decided, in the first instance, by the presiding officer, without any previous debate or discussion by the

assembly. If the decision of the presiding officer is not satisfactory, any one member may object to it, and have the question decided by the assembly. This is called *appealing* from the decision of the chair. The question is then stated by the presiding officer, on the appeal, namely : *shall the decision of the chair stand as the decision of the assembly ?* and it is thereupon debated and decided by the assembly, in the same manner as any other question ; except that the presiding officer is allowed to take a part in the debate, which, on ordinary occasions, he is prohibited from doing.

Reading Papers.

155. It is, for obvious reasons, a general rule, that, where papers are laid before a deliberative assembly, for its action, every member has a right to have them once read at the table, before he can be compelled to vote on them ; and, consequently, when the reading of any paper, relative to a question before the assembly, is called for under this rule, no question need be made as to the reading ; the paper is read by the clerk, under the direction of the presiding officer, as a matter of course.

156. But, with the exception of papers coming under this rule, it is not the right of any member to read himself, or to have read, any paper, book, or document whatever, without the leave of the assembly, upon a motion made and a question put for the purpose. The delay and interruption, which would otherwise ensue from reading every paper that might be called for, show the absolute necessity of restricting the rule within the narrowest possible limits, consistently with permitting every member to have as much information as possible, on the subjects in reference to which he is about to vote.

157. When, therefore, a member desires that any paper, book, or document, on the table, whether printed or written (except as above mentioned) should be read for his own information, or that of the assembly ; or desires to read any such paper, book, or document, in his place, in the course of a debate, or otherwise ; or even to read his own speech which he has prepared beforehand and committed to writing; in all these cases, if any objection is made, he must obtain leave of the assembly, for the reading, by a motion and vote for the purpose.

158. When the reading of a paper is evidently for information, and not for delay, it is the usual practice for the presiding officer to allow of it, unless objection is made, in which case leave must be asked ; and this is seldom refused, where there is no intentional or gross abuse of the time and patience of the assembly.

159. It is not now the practice, as it once was, in legislative assemblies, to read all papers that are presented, especially when they are referred to committees immediately on their presentation ; though the right of every member to insist upon one reading is still admitted. It would be impossible, with the amount of business done by legislative bodies, at the present day, to devote much of their time to the reading of papers.

160. When in the course of a debate or other proceeding, the reading of a paper is called for, and a question is made upon it, this question is incidental to the former, and must be first decided.

Withdrawal of a Motion.

161. A motion, when regularly made, seconded, and proposed from the chair, is then

in the possession of the assembly, and cannot be withdrawn by the mover, or directly disposed of in any manner, but by a vote; hence, if the mover of a question wishes to modify it, or to substitute a different one in its place, he must obtain the leave of the assembly for that purpose; which leave can only be had, if objection is made, by a motion [which is not debatable] and question in the usual mode of proceeding. [Par. 56, *note*].

162. If this motion is decided in the affirmative, the motion to which it relates is thereby removed from before the assembly, as if it had never been moved; if in the negative, the business proceeds as before.

Suspension of a Rule.

163. When any contemplated motion or proceeding is rendered impracticable, by reason of the existence of some special rule by which it is prohibited, it has become an established practice in this country, to suspend or dispense with the rule, for the purpose of admitting the proceeding or motion which is desired. This can only be done by a motion and question; and, where this course is taken in order to a motion having reference to a proposition then

under consideration, a motion to suspend the rule supersedes the original question for the time being, and is first to be decided, [without debate.]

164. It is usual, in the code of rules adopted by deliberative assemblies, and especially legislative bodies, to provide that a certain number exceeding a majority, as two thirds or three fourths, shall be competent to the suspension of a rule in a particular case; where this is not provided, there seems to be no other mode of suspending or dispensing with a rule than by general consent.

Amendment of Amendments.

165. In treating of amendments, it has already been seen, that it is allowable to amend a proposed amendment; and that the question on such sub-amendment must necessarily be put and decided before putting the question on the amendment. The former is incidental to the latter, and supersedes it for the time being.

Sect. III. Subsidiary Questions.

166. Subsidiary, or secondary, questions or motions, as has already been stated, are those

which relate to a principal motion, and are made use of to enable the assembly to dispose of it in the most appropriate manner. These motions have the effect to supersede, and, in some cases, when decided one way, to dispose of, the principal question. They are also of different degrees among themselves, and, according to their several natures, supersede, and sometimes dispose of, one another.

167. The subsidiary motions in common use are the following, namely :—lie on the table,—the previous question,—postponement, either indefinite or to a day certain,—commitment,—and, amendment.

168. It is a general rule, with certain exceptions which will be immediately mentioned, that subsidiary motions cannot be applied to one another; as for example, suppose a motion to postpone, commit or amend a principal question, it cannot be moved to suppress the motion to postpone, &c., by putting a previous question on it; or, suppose the previous question is moved, or a commitment, or amendment, of a main question, it cannot be moved to postpone the previous question, or the motion for commitment or amendment. The reasons for this rule are: 1. It would be absurd

to separate the appendage from its principal; 2. It would be a piling of questions one on another, which, to avoid embarrassment, is not allowed; and 3. The same result may be reached more simply by voting against the motion which it is attempted to dispose of by another secondary motion.

169. The exceptions to the rule above stated are, that motions to postpone (either to a day certain or indefinitely), to commit, or to amend, a principal question, may be amended, for the reason, that the useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion"; that is, a subsidiary motion to carry out and improve another may be applied to that other, but a subsidiary motion to dispose of or suppress another is not admissible. Hence, the subsidiary motions above mentioned may be amended.

170. A previous question, however, cannot be amended; the nature of it not admitting of any change. Parliamentary usage has fixed its form to be, shall the main question be now put? that is, at this instant; and, as the present instant is but one, it cannot admit of any modification; and to change it to the next

day or any other moment is without example or utility. For the same reasons, also, that the form of it is fixed by parliamentary usage, and is already as simple as it can be, a motion to lie on the table cannot be amended.

Lie on the Table.

171. This motion is usually resorted to, when the assembly has something else before it, which claims its present attention, and therefore desires to lay aside a proposition for a short but indefinite time, reserving to itself the power to take it up when convenient. This motion takes precedence of and supersedes all the other subsidiary motions.

[In Congress, by special rule, the motion to lie on the table is subordinate only to the motion to adjourn. By parliamentary law it is subordinate to all three of the privileged questions. It is not debatable, nor subject to amendment. A member may have a motion made, or resolutions offered by himself laid on the table. Thus in U. S. Senate, Feb. 23, 1886, Mr. Morgan, of Alabama, presented a preamble and resolutions which were read, and then at his request, the resolutions were laid on the table to wait until he chose to call them up for the action of the Senate.—(Par. 72) Ed.]

172. If decided in the affirmative, the principal motion, together with all the other motions, subsidiary and incidental, connected with it, is removed from before the assembly, until it is again taken up; which it may be, by motion and vote, at any time, when the assembly pleases.

173. If decided in the negative, the business proceeds in the same manner as if the motion had never been made.

Previous Question.

174. This motion has already been described (63), and the nature and effect of it fully stated. It stands in an equal degree with all the other subsidiary motions, except the motion to lie on the table; and, consequently, if first moved, is not subject to be superseded by a motion to postpone, commit or amend.

175. If the previous question is moved before the others above mentioned, and put to the question, it has the effect to prevent those motions from being made at all; for, if decided affirmatively, to wit, that the main question shall now be put, it would of course be contrary to the decision of the assembly, and therefore against order, to postpone, com-

mit, or amend; and if decided negatively, to wit, that the main question shall not now be put, this takes the main question out of the possession of the assembly, for the day, so that there is then nothing before it to postpone, commit, or amend.*

Postponement.

176. The motion to postpone is either indefinite, or to a day certain; and, in both these forms, may be amended; in the former, by making it to a day certain,—in the latter, by substituting one day for another. But, in the latter case, propositions to substitute different days for that originally named, bear more resemblance to propositions for filling blanks, than they do to amendments, and should be considered and treated accordingly.

177. If, therefore, a motion is made for an indefinite postponement, it may be moved to amend the motion, by making it to a day certain. If any other day is desired, it may be moved as an amendment to the amend-

* In the house of representatives of Massachusetts, as the effect of a negative decision of the previous question is not to remove the principal question from before the house, that question is still open to postponement, commitment, or amendment, notwithstanding such negative decision.

ment; or it may be moved as an independent motion, when the amendment has been rejected.

[In many legislative assemblies the practice is different, and motions to postpone indefinitely *cannot* be amended, for the reason that one form of question cannot be changed into another.—Ed.]

178. If a motion is made for a postponement to a day certain, it may be amended by the substitution of a different day; but in this case, a more simple and effectual mode of proceeding is to consider the day as a blank, to be filled in the usual manner, beginning with the longest time.

179. This motion stands in the same degree with motions for the previous question,—to commit,—and to amend; and, if first made, is not susceptible of being superseded by them.

180. If a motion for postponement is decided affirmatively, the proposition to which it is applied is removed from before the assembly, with all its appendages and incidents, and consequently there is no ground for either of the other subsidiary motions; if decided negatively, that the proposition shall not be post-

poned, that question may then be suppressed by the previous question, or committed, or amended.

Commitment.

181. A motion to commit,* or recommit (which is the term used when the proposition has already been once committed), may be amended, by the substitution of one kind of committee for another, or by enlarging or diminishing the number of the members of the committee, as originally proposed, or by instructions to the committee.

[* The motion itself may be debated, but no debate on the merits of the question is allowed until reported back to the house.—[Ed.

182. This motion stands in the same degree with the previous question and postponement —and, if first made, is not superseded by them—but it takes precedence of a motion to amend.

183. If decided affirmatively, the proposition is removed from before the assembly; and, consequently, there is no ground for the previous question, or for postponement, or amendment; if negatively, to wit, that the principal question shall not be committed,

that question may then be suppressed by the previous question, or postponed, or amended.

Amendment.

184. A motion to amend, as has been seen, may be itself amended. It stands in the same degree only with the previous question and indefinite postponement, and neither, if first moved, is superseded by the other.

185. But this motion is liable to be superseded by a motion to postpone to a day certain; so that amendment and postponement competing, the latter is to be first put. The reason is, that a question for amendment is not suppressed by postponing or adjourning the principal question, but remains before the assembly, whenever the main question is resumed; for otherwise, it might happen, that the occasion for other urgent business might go by and be lost by length of debate on the amendment, if the assembly had no power to postpone the whole subject.

186. A motion to amend may also be superseded by a motion to commit; so that the latter, though subsequently moved, is to be first put; because, "in truth, it facilitates and befriends the motion to amend."

187. The effect of both a negative and an affirmative decision of amendments has already been considered (94 to 127).

CHAPTER XI.

OF THE ORDER OF PROCEEDING.

188. When several subjects are before the assembly, that is, on their table for consideration (for there can be but a single subject *under* consideration at the same time), and no priority has been given to any one over another, the presiding officer is not precisely bound to any order, as to what matters shall be first taken up; but is left to his own discretion, unless the assembly on a question decide to take up a particular subject.

189. A settled order of business, however, where the proceedings of an assembly are likely to last a considerable time, and the matters before it are somewhat numerous, is useful if not necessary for the government of the presiding officer, and to restrain individual members from calling up favorite measures, or matters under their special charge, out of their just time. It is also desirable, for direct-

ing the discretion of the assembly, when a motion is made to take up a particular matter, to the prejudice of others, which are of right entitled to be first attended to, in the general order of business.

190. The order of business may be established in virtue of some general rule, or by special orders relating to each particular subject; and must, of course, necessarily depend upon the nature and amount of the matters before the assembly.

191. The natural order, in considering and amending any paper, which consists of several distinct propositions, is, to begin at the beginning, and proceed through it by paragraphs; and this order of proceeding, if strictly adhered to, as it should always be in numerous assemblies, would prevent any amendment in a former part, from being admissible, after a latter part had been amended; but this rule does not seem to be so essential to be observed in smaller bodies, in which it may often be advantageous to allow of going from one part of a paper to another, for the purpose of amendments.

192. To this natural order of beginning at the beginning, there is one exception accord-

ing to parliamentary usage, where a resolution or series of resolutions, or other paper, has a preamble or title; in which case, the preamble or title is postponed, until the residue of the paper is gone through with.

193. In considering a proposition consisting of several paragraphs, the course is, for the whole paper to be read entirely through, in the first place, by the clerk; then, a second time, by the presiding officer, by paragraphs; pausing at the end of each, and putting questions for amending, if amendments are proposed; and, when the whole paper has been gone through with, in this manner, the presiding officer puts the final question on agreeing to or adopting the whole paper, as amended, or unamended.

194. When a paper, which has been referred to a committee, and reported back to the assembly, is taken up for consideration, the amendments only are first read, in course, by the clerk. The presiding officer then reads the first, and puts it to the question, and so on until the whole are adopted or rejected, before any other amendment is admitted, with the exception of an amendment to an amendment. When the amendments re-

ported by the committee have been thus disposed of, the presiding officer pauses, and gives time for amendments to be proposed in the assembly to the body of the paper (which he also does, if the paper has been reported without amendments, putting no questions but on amendments proposed); and when through the whole, he puts the question on agreeing to or adopting the paper, as the resolution, order, &c., of the assembly.

195. The final question is sometimes stated merely on the acceptance of the report, but a better form is on agreeing with the committee in the resolution, order, or whatever else the conclusion of the report may be, as amended, or without amendment; and the resolution or order is then to be entered in the journal as the resolution, &c., of the assembly, and not as the report of the committee accepted.

196. When the paper referred to a committee is reported back, as amended, in a new draft (which may be and often is done, where the amendments are numerous and comparatively unimportant), the new draft is to be considered as an amendment, and is to be first amended, if necessary, and then put to the question as an amendment reported by

the committee ; or, the course may be, first to accept the new draft, as a substitute for the original paper, and then to treat it as such.

197. It often happens, that, besides a principal question, there are several others connected with it, pending at the same time, which are to be taken in their order ; as, for example, suppose, *first*, a principal motion ; *second*, a motion to amend ; *third*, a motion to commit ; *fourth*, the preceding motions being pending, a question of order arises in the debate, which gives occasion, *fifth*, to a question of privilege, and this leads, *sixth*, to a subsidiary motion, as, to lie on the table. The regular course of proceeding requires the motion to lie on the table to be first put ; if this is negatived, the question of privilege is then settled ; after that comes the question of order ; then the question of commitment ; if that is negatived, the question of amendment is taken ; and, lastly, the main question. This example will sufficiently illustrate the manner in which questions may grow out of one another, and in what order they are to be decided.*

* The order of motions, for the disposal of any question, is usually fixed by a special rule, in legislative assemblies. See note to paragraph 61.

198. When a motion is made and seconded, it is the duty of the presiding officer to propose it to the assembly; until this is done, it is not a question betore the assembly, to be acted upon or considered in any manner; and consequently it is not then in order for any member to rise either to debate it, or to make any motion in relation to it whatever.

199. It is therefore a most unparliamentary and abusive proceeding to allow a principal motion and a subsidiary one relating to it to be proposed and stated together, and to be put to the question in their order; as is done, when a member moves a principal question, a resolution, for example, and, at the same time, the previous question, or that the resolution lie on the table. In such a case, the presiding officer should take no notice whatever of the subsidiary motion, but should propose the principal one by itself in the usual manner, before allowing any other to be made. Other members, then, would not be deprived of their rights of debate, &c., in relation to the subject moved.

200. When a member has obtained the floor, he cannot be cut off from addressing the assembly, on the question before it; nor, when

speaking, can he be interrupted in his speech, by any other member rising and moving an adjournment, or for the orders of the day, or by making any other privileged motion of the same kind ; it being a general rule, that a member in possession of the floor, or proceeding with his speech, cannot be taken down or interrupted, but by a call to order ; and the question of order being decided, he is still to be heard through. A call for an adjournment, or for the orders of the day, or for the question, by gentlemen in their seats, is not a motion ; as no motion can be made, without rising and addressing the chair, and being called to by the presiding officer. Such calls for the question are themselves breaches of order, which, though the member who has risen may respect them, as an expression of the impatience of the assembly at further debate, do not prevent him from going on if he pleases.

CHAPTER XII.

OF ORDER IN DEBATE.

201. Debate in a deliberative assembly must be distinguished from forensic debate, or that which takes place before a judicial tribunal; the former being, in theory, at least, more the expression of individual opinions among the members of the same body; the latter more a contest for victory, between the disputants, before a distinct and independent body; the former not admitting of replies; the latter regarding reply as the right of one of the parties.*

202. It is a general rule, in all deliberative assemblies, that the presiding officer shall not participate in the debate, or other proceedings, in any other capacity than as such officer. He is only allowed, therefore, to state matters of fact within his knowledge; to inform the assembly on points of order or the course of

*An exception to this rule is sometimes made in favor of the mover of a question, who is allowed, at the close of the debate, to reply to the arguments brought against his motion; but this is a matter of favor and indulgence, and not of right

proceeding, when called upon for that purpose, or when he finds it necessary to do so; and on appeals from his decision on questions of order, to address the assembly in debate.

Sect. I. As to the Manner of speaking.

203. When a member desires to address the assembly, on any subject before it (as well as to make a motion), he is to rise and stand up in his place, uncovered, and to address himself not to the assembly, or any particular member, but to the presiding officer, who, on hearing him, calls to him by his name, that the assembly may take notice who it is that speaks, and give their attention accordingly. If any question arises, as to who shall be entitled to the floor, where several members rise at or nearly at the same time, it is decided in the manner already described (46), as to obtaining the floor to make a motion.

204. It is customary, indeed, for the presiding officer, after a motion has been made, seconded, and proposed, to give the floor to the mover *, in preference to others, if he rises

* Sometimes a member, instead of proposing his motion, at first, proceeds with his speech; but in such a case, he is liable to be taken down to order, unless he states that he intends to conclude with a motion, and

to speak; or, on resuming a debate, after an adjournment, to give the floor, if he desires it, to the mover of the adjournment, in preference to other members; or, where two or more members claim the floor, to prefer him who is opposed to the measure in question; but, in all these cases, the determination of the presiding officer may be overruled by the assembly.

205. It is sometimes thought, that, when a member, in the course of debate, breaks off his speech, and gives up the floor to another for a particular purpose, he is entitled to it again, as of right, when that purpose is accomplished; but, though this is generally conceded, yet, when a member gives up the floor for one purpase, he does so for all; and it is not possible for the presiding officer to take notice of and enforce agreements of this nature between members.

206. No person, in speaking, is to mention a member then present by his name; but to describe him by his seat in the assembly, or as the member who spoke last, or last but one, or on the other side of the question, or by

informs the assembly what that motion is, and then he may be allowed to proceed.

some other equivalent expression. The purpose of this rule is to guard as much as possible against the excitement of all personal feeling, either of favor or of hostility, by separating, as it were, the official from the personal character of each member, and having regard to the former only in the debate.

207. If the presiding officer rises up to speak, any other member, who may have risen for the same purpose, ought to sit down, in order that the former may be first heard; but this rule does not authorize the presiding officer to interrupt a member, whilst speaking, or to cut off one to whom he has given the floor; he must wait like other members until such member has done speaking.

208. A member, whilst speaking, must remain standing in his place, uncovered; and, when he has finished his speech, he ought to resume his seat; but if unable to stand without pain or inconvenience, in consequence of age, sickness, or other infirmity, he may be indulged to speak sitting.

Sect. II. As to the Matter in speaking.

209. Every question, that can be made in a deliberative assembly, is susceptible of being

debated, * according to its nature; that is, every member has the right of expressing his opinion upon it. Hence, it is a general rule, and the principal one relating to this matter, that, in debate, those who speak are to confine themselves to the question, and not to speak impertinently, or beside the subject. So long as a member has the floor, and keeps within the rule, he may speak for as long a time as he pleases; though, if an uninteresting speaker trespasses too much upon the time and patience of the assembly, the members seldom fail to show their dissatisfaction in some way or other, which induces him to bring his remarks to a close. [* In Congress, all debate is interdicted].

210. It is also a rule, that no person, in speaking, is to use indecent language against the proceedings of the assembly, or to reflect upon any of its prior determinations, unless he means to conclude his remarks with a motion to rescind such determination; but while a proposition under consideration is still

* In legislative bodies, it is usual to provide, that certain questions, as, for example, to adjourn, to lie on the table, for the previous question, or, as to the order of business, shall be decided without debate.

pending, and not adopted, though it may have been reported by a committee, reflections on it are no reflections on the assembly. The rule applies equally to the proceedings of committees; which are, indeed, the proceedings of the assembly.

211. Another rule in speaking is, that no member is at liberty to digress from the matter of the question, to fall upon the person of another, and to speak reviling, nipping, or unmannerly words of or to him. The nature or consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who advocate it, is a personality and against order.

212. It is very often an extremely difficult and delicate matter to decide whether the remarks of a member are pertinent or relevant to the question; but it will, in general, be safe for the presiding officer to consider them so, unless they very clearly reflect, in an improper manner, either upon the person or motives of a member, or upon the proceedings of the assembly; or the member speaking digresses from or manifestly mistakes the question.

213. It often happens in the consideration of a subject, that, whilst the general question

remains the same, the particular question before the assembly is constantly changing; thus, while, for example, the general question is on the adoption of a series of resolutions, the particular question may, at one moment, be on an amendment; at another on postponement; and, again, on the previous question. In all these cases, the particular question supersedes, for the time, the main question; and those who speak to it must confine their remarks accordingly. The enforcement of order, in this respect, requires the closest attention on the part of the presiding officer.

214. When a member is interrupted by the presiding officer, or called to order by a member, for irrelevancy or departing from the question, a question may be made as to whether he shall be allowed to proceed in his remarks, in the manner he was speaking when he was interrupted; but, if no question is made, or if one is made and decided in the negative, he is still to be allowed to proceed in order, that is, abandoning the objectionable course of remark.

[The member addressing the chair, will say, "I rise to a point of order." Having stated the points which, in his opinion, show

that the speaker is digressive and irrelevant in his remarks, the presiding officer will rule whether the member is out of order or not. If an appeal is taken from the president's ruling, it is not debatable.—Ed.]

Sect. III. As to Times of speaking.

215. The general rule, in all deliberative assemblies, unless it is otherwise specially provided, is, that no member shall speak more than once to the same question;* although the debate on that question may be adjourned and continued through several days; and, although a member, who desires to speak a second time, has, in the course of the debate, changed his opinion.

[This rule exists in Congress, but in assemblies which have adopted no rule, members may speak twice to principal and subsidiary questions, but not on questions of order that are debatable. But whether a member has spoken once or twice, he may speak again in explanation.—Ed.]

216. This rule refers to the same question,

* The mover and seconder, if they do not speak to the question, at the time when the motion is made and seconded, have the same right with other members to address the assembly.

technically considered; for, if a resolution is moved and debated, and then referred to a committee, those who speak on the introduction of the motion may speak again on the question presented by the report of the committee, though it is substantially the same question with the former; and, so, members, who have spoken on the principal or main question, may speak again on all the subsidiary or incidental questions arising in the course of the debate.

217. The rule, as to speaking but once on a question, if strictly enforced, will prevent a member from speaking a second time without the general consent of the assembly, so long as there is any other member who himself desires to speak; but, when all who desire to speak have spoken, a member may speak a second time by leave of the assembly.

218. A member may also be permitted to speak a second time, in the same debate, in order to clear a matter of fact; or merely to explain himself in some material part of his speech; or to the orders of the assembly, if they be transgressed (although no question may be made), but carefully keeping within that line and not falling into the matter itself.

219. It is sometimes supposed, that, because a member has a right to explain himself, he therefore has a right to interrupt another member whilst speaking, in order to make the explanation: but this is a mistake; he should wait until the member speaking has finished; and if a member, on being requested, yields the floor for an explanation, he relinquishes it altogether.

Sect. IV. As to stopping Debate.

220. The only mode in use, in this country, until recently, for the purpose of putting an end to an unprofitable or tiresome debate, was by moving the previous question; the effect of which motion, as already explained, if decided in the affirmative, is to require the main or principal question to be immediately taken. When this question is moved, therefore, it necessarily suspends all further consideration of the main question, and precludes all further debate or amendment of it; though, as has been seen, it stands in the same degree with postponement, amendment, and commitment; and, unless in virtue of a special rule, cannot be moved while either of those motions is pending.

221. The other mode of putting an end to debate, which has recently been introduced into use, is for the assembly to adopt beforehand a special order in reference to a particular subject, that, at such a time specified, all debate upon it shall cease, and all motions or questions pending in relation to it shall be decided.

222. Another rule, which has lately been introduced for the purpose of shortening rather than stopping debate, is, that no member shall be permitted to speak more than a certain specified time on any question ; so that, when the time allotted has expired, the presiding officer announces the fact, and the member speaking resumes his seat.

[Closure.—Under this name, the British Parliament (1884) introduced a rule that when debate has become tedious and disorderly, obstructs the imperative business of the house, and is considered to imperil the interests of the country, it may be summarily closed by a majority vote, and the measure under consideration be thereupon submitted to the decision of the assembly.—The Congress of the United States (1886) has adopted a more effectual rule to enable a question, after reasonable debate, to be taken at once.

The rule which limits a speaker to a specified time prevails in most deliberative assemblies, as well as in courts of law, and is an effectual check to prolix and unprofitable debate. Where every member has a right to be heard, the rule should be rigidly enforced, not only to facilitate business, but in order that the session shall not be protracted to an unseasonable hour. A motion to adopt this rule should be seconded, and a vote taken without debate, its design being not to increase, but to prevent the consumption of time.—Ed.]

Sect. V. As to Decorum in Debate.

223. Every member having the right to be heard, every other member is bound to conduct himself in such a manner, that this right may be effectual. Hence, it is a rule of order, as well as of decency, that no member is to disturb another in his speech by hissing, coughing, spitting; by speaking, or whispering; by passing between the presiding officer and the member speaking; by going across the assembly-room, or walking up and down in it; or by any other disorderly deportment,

which tends to disturb or disconcert a member who is speaking.

224. But, if a member speaking finds, that he is not regarded with that respectful attention, which his equal right demands,—that it is not the inclination of the assembly to hear him,—and that by conversation or any other noise they endeavor to drown his voice, —it is his most prudent course to submit himself to the pleasure of the assembly, and to sit down; for it scarcely ever happens, that the members of an assembly are guilty of this piece of ill manners, without some excuse or provocation, or that they are so wholly inattentive to one, who says any thing worth their hearing.

225. It is the duty of the presiding officer, in such a case, to endeavor to reduce the assembly to order and decorum; but, if his repeated calls to order, and his appeals to the good sense and decency of the members, prove ineffectual, it then becomes his duty to call by name any member who obstinately persists in irregularity; whereupon the assembly may require such member to withdraw; who is then to be heard, if he desires it, in exculpation, and to withdraw; then the

presiding officer states the offence committed, and the assembly considers of the kind and degree of punishment to be inflicted.

226. If, on repeated trials, the presiding officer finds that the assembly will not support him in the exercise of his authority, he will then be justified, but not till then, in permitting, without censure, every kind of disorder.

Sect. VI. As to Disorderly Words.

227. If a member, in speaking, makes use of language, which is personally offensive to another, or insulting to the assembly, and the member offended, or any other, thinks proper to complain of it to the assembly, the course of proceeding is as follows :

228. The member speaking is immediately interrupted in the course of his speech, by another or several members rising and calling to order; and, the member, who objects or complains of the words, is then called upon by the presiding officer to state the words which he complains of, repeating them exactly as he conceives them to have been spoken, in order that they may be reduced to writing by the clerk; or the member complaining, without being so called upon, may proceed at

once to state the words either verbally or in writing, and desire that the clerk may take them down at the table. The presiding officer may then direct the clerk to take them down; but if he sees the objection to be a trivial one, and thinks there is no foundation for their being thought disorderly, he will prudently delay giving any such directions, in order not unnecessarily to interrupt the proceedings; though if the members generally seem to be in favor of having the words taken down, by calling out to that effect, or by a vote, which the assembly may doubtless pass, the presiding officer should certainly order the clerk to take them down, in the form and manner in which they are stated by the member who objects.

229. The words objected to being thus written down, and forming a part of the minutes in the clerk's book, they are next to be read to the member who was speaking, who may deny that those are the words which he spoke, in which case, the assembly must decide by a question, whether they are the words or not.* If he does not deny

* The words, as written down, may be amended, so as to conform to what the assembly thinks to be the truth.

that he spoke those words, or when the assembly has itself determined what the words are, then the member may either justify them, or explain the sense in which he used them, so as to remove the objection of their being disorderly; or he may make an apology for them.

230. If the justification, or explanation, or apology, of the member, is thought sufficient by the assembly, no further proceeding is necessary; the member may resume and go on with his speech, the assembly being presumed, unless some further motion is made, to be satisfied; but if any two members (one to make and the other to second the motion) think it necessary to state a question, so as to take the sense of the assembly upon the words, and whether the member in using them has been guilty of any offence towards the assembly, the member must withdraw before that question is stated; and then the sense of the assembly must be taken, and such further proceedings had in relation to punishing the member, as may be thought necessary and proper.

231. The above is the course of proceeding established by the writers of greatest author-

ity *, and ought invariably to be pursued; it might however be improved, by the member who objects to words writing them down at once, and thereupon moving that they be made a part of the minutes; by which means, the presiding officer would be relieved from the responsibility of determining, in the first instance, upon the character of the words.

232. If offensive words are not taken notice of at the time they are spoken,† but the member is allowed to finish his speech, and then any other person speaks, or any other matter of business intervenes, before notice is taken of the words which gave offence, the words are not to be written down, or the member using them censured. This rule is established for the common security of all the members; and to prevent the mistakes which must necessarily happen, if words complained of are not immediately reduced to writing.

* Mr. Hatsell, in England, and Mr. Jefferson, in this country.

† Mr. Jefferson (§ 17) lays it down, that "disorderly words are not to be noticed till the member has finished his speech.' But in this, he is contradicted by Hatsell, as well as by the general practice of legislative bodies.

CHAPTER XIII.

OF THE QUESTION.

233. When any proposition is made to a deliberative assembly, it is called a *motion;* when it is stated or propounded to the assembly, for their acceptance or rejection, it is denominated a *question;* and, when adopted, it becomes the *order*, *resolution*, or *vote*, of the assembly.

234. All the proceedings, which have thus far been considered, have only had for their object to bring a proposition into a form to be put to the question; that is, to be adopted as the sense, will, or judgment, of the assembly, or to be rejected; according as such proposition may be found to unite in its favor, or to fail of uniting, a majority of the members.

235. When any proposition, whether principal, subsidiary, or incidental, or of whatever nature it may be, is made, seconded, and stated, if no alteration is proposed,—or if it admits of none, or if it is amended,—and the

debate upon it, if any, appears to be brought to a close, the presiding officer then inquires, whether the assembly is ready for the question? and, if no person rises, the question is then stated, and the votes of the assembly taken upon it.

236. The question is not always stated to the assembly, in the precise form in which it arises or is introduced; thus, for example, when a member presents a petition, or the chairman of a committee offers a report, the question which arises, if no motion is made, is, *Shall the petition or the report be received?* and, so, when the previous question is moved, it is stated in this form, *Shall the main question be now put?*—the question being stated, in all cases, in the form in which it will appear on the journal, if it passes in the affirmative.

237. In matters of trifling importance, or which are generally of course, such as receiving petitions and reports, withdrawing motions, reading papers, &c., the presiding officer most commonly supposes or takes for granted the consent of the assembly, where no objection is expressed, and does not go through the formality of taking the question by a vote. But if, after a vote has been

taken in this informal way and declared, any member rises to object, the presiding officer should consider every thing that has passed as nothing, and, at once, go back and pursue the regular course of proceeding. Thus, if a petition is received, without a question, and the clerk is proceeding to read it, in the usual order of business, if any one rises to object, it will be the safest and most proper course, for the presiding officer to require a motion for receiving it to be regularly made and seconded.

238. The question being stated by the presiding officer, he first puts it in the affirmative, namely: *As many as are of opinion that*— repeating the words of the question,—*say aye;* and, immediately, all the members who are of that opinion answer *aye;* the presiding officer then puts the question negatively; *As many as are of a different opinion, say no;* and, thereupon, all the members who are of that opinion answer *no.* The presiding officer judges by his ear which side has "the more voices," and decides accordingly, that *the ayes have it*, or *the noes have it*, as the case may be. If the presiding officer is doubtful as to the majority of voices, he may put the question a

second time, and if he is still unable to decide, or, if, having decided according to his judgment, any member rises and declares that he believes the *ayes* or the *noes* (whichever it may be) *have it*, contrary to the declaration of the presiding officer,* then the presiding officer directs the assembly to divide, in order that the members on the one side and the other may be counted.

239. If, however, any new motion should be made, after the presiding officer's declaration, or, if a member, who was not in the assembly-room when the question was taken, should come in, it will then be too late to contradict the presiding officer, and have the assembly divided.

240. The above is the parliamentary form of taking a question, and is in general use in this country; but, in some of our legislative assemblies, and especially in those of the New England states, the suffrages are given by the members holding up their right hands, first, those in the affirmative, and then those in the negative, of the question. If the presiding officer cannot determine, by the show

* The most common expression is; "I doubt the vote," or, "that vote is doubted."

of hands, which side has the majority, he may call upon the members to vote again, and if he is still in doubt, or if his declaration is questioned, a division takes place. When the question is taken in this manner, the presiding officer directs the members, first on the affirmative side, and then on the negative, to manifest their opinion by holding up the right hand.

241. When a division of the assembly takes place, the presiding officer sometimes directs the members to range themselves on different sides of the assembly-room, and either counts them himself, or they are counted by tellers appointed by him for the purpose, or by monitors permanently appointed for that and other purposes; or the members rise in their seats, first on the affirmative and then on the negative, and (standing uncovered) are counted in the same manner. When the members are counted by the presiding officer, he announces the numbers and declares the result. When they are counted by tellers or monitors, the tellers must first agree among themselves, and then the one who has told for the majority reports the numbers to the presiding officer, who, thereupon, declares the result.

242. The best mode of dividing an assembly, that is at all numerous, is for the presiding officer to appoint tellers for each division or section of the assembly-room, and then to require the members, first those in the affirmative, and then those in the negative, to rise, stand uncovered, and be counted; this being done, on each side, the tellers of the several divisions make their returns, and the presiding officer declares the result.

243. If the members are equally divided, the presiding officer may, if he pleases, give the casting vote; or, if he chooses, he may refrain from voting, in which case, the motion does not prevail, and the decision is in the negative. [See § 25, also page 146, § 249. *Note.*]

244. It is a general rule, that every member, who is in the assembly-room at the time when the question is stated, has not only the right but is bound to vote; and, on the other hand, that no member can vote, who was not in the room at that time.

245. The only other form of taking the question, which requires to be described, is one in general use in this country, by means of which the names of the members voting on

the one side and on the other are ascertained and entered in the journal of the assembly. This mode, which is peculiar to the legislative bodies of the United States, is called taking the question by yeas and nays. In order to take a question in this manner, it is stated on both sides at once, namely: *As many as are of opinion, that, etc., will when their names are called, answer yes;* and, *As many as are of a different opinion will, when their names are called answer no;* the roll of the assembly is then called over by the clerk, and each member, as his name is called, rises in his place, and answers *yes* or *no*, and the clerk notes the answer as the roll is called. When the roll has been gone through the clerk reads over first the names of those who have answered in the affirmative and then the names of those who have answered in the negative, in order that if he has made any mistake in noting the answer, or if any member has made a mistake in his answer, the mistake of either may be corrected. The names having been thus read over, and the mistakes, if any, corrected, the clerk counts the numbers on each side, and reports them to the presiding officer, who declares the result to the assembly.

[By the Constitution of the United States one fifth of the members of Congress may compel the taking of a question by yeas and nays. In many of the State constitutions the number is the same; in some, the power is given to three, in some to two, and in some to one member. In all deliberative bodies which have no prescribed rule on the subject, the yeas and nays can be ordered only by the majority, ascertained by motion, question and vote. *Vide Par.* 25, *note.*—Ed.]

246. The following is the mode practised in the house of representatives of Massachusetts, (which is by far the most numerous of all the legislative bodies in this country,) of taking a question by yeas and nays. The names of the members being printed on a sheet, the clerk calls them in their order; and as each one answers, the clerk (responding to the member, at the same time) places a figure in pencil, expressing the number of the answer, at the left or right of the name, according as the answer is yes or no; so that the last figure or number, on each side, shows the number of the answers on that side; and the two last numbers or figures represent the respective numbers of the affirmatives and nega-

tives on the division. Thus, at the left hand of the name of the member who first answers *yes*, the clerk places a figure 1; at the right hand of the first member who answers *no*, he also places a figure 1; the second member that answers *yes* is marked 2; and so on to the end of the list; the side of the name, on which the figure is placed, denoting whether the answer is *yes* or *no*, and the figure denoting the number of the answer on that side. The affirmatives and negatives are then read separately, if necessary, though this is usually omitted, and the clerk is then prepared, by means of the last figure on each side, to give the numbers to the speaker to be announced to the house. The names and answers are afterwards recorded on the journal.

247. In any of the modes of taking a question, in which it is first put on one side, and then on the other, it is no full question, until the negative as well as the affirmative has been put. Consequently, until the negative has been put, it is in order for any member, in the same manner as if the division had not commenced, to rise and speak, make motions for amendment, or otherwise, and thus renew the debate; and this, whether such member

was in the assembly-room or not, when the question was put and partly taken. In such a case, the question must be put over again on the affirmative as well as the negative side; for the reason, that members who were not in the assembly-room, when the question was first put, may have since come in, and also that some of those who voted, may have since changed their minds. When a question is taken by yeas and nays, and the negative as well as the affirmative of the question is stated, and the voting on each side begins and proceeds at the same time, the question cannot be opened and the debate renewed, after the voting has commenced.

[A member who asserts that he voted by mistake, may change his vote after the yeas and nays are called. In some legislative bodies however, members are permitted to change their votes even after the business is disposed of, provided such change does not alter the result.—Thus they are given the benefit of the "sober second thought" as to which side will be popular with their constituents who inspect the yeas and nays.—Ed.]

248. If any question arises, in a point of order, as, for example, as to the right or the

duty of a member to vote, during a division, the presiding officer must decide it peremptorily, subject to the revision and correction of the assembly, after the division is over. In a case of this kind, there can be no debate, though the presiding officer may if he pleases receive the assistance of members with their advice, which they are to give sitting, in order to avoid even the appearance of a debate; but this can only be with the leave of the presiding officer, as otherwise the division might be prolonged to an inconvenient length; nor can any question be taken, for otherwise there might be division upon division without end.

249. When, from counting the assembly on a division, it appears that there is not a quorum present, there is no decision: but the matter in question continues in the same state, in which it was before the division; and, when afterwards resumed, whether on the same or on some future day, it must be taken up at that precise point.

[It is sometimes claimed that it is the "duty of the presiding officer to give the casting vote," but this depends altogether upon the law or will of the assembly, as expressed in the rules which it has adopted to regulate its proceedings. In most assemblies the presiding officer gives the casting vote according to a fixed rule or custom; but it is not his "duty" to do so under general parliamentary law.—The Constitution of the United States *permits* the President of the Senate to vote on a tie only—but does not *command* it. See § 243. —Ed.]

CHAPTER XIV.

OF RECONSIDERATION.

250. It is a principle of parliamentary law, upon which many of the rules and proceedings previously stated are founded, that when a question has been once put to a deliberative assembly, and decided, whether in the affirmative or negative, that decision is the judgment of the assembly, and cannot be again brought into question.

251. This principle holds equally, although the question proposed is not the identical question which has already been decided, but only its equivalent; as, for example, where the negative of one question amounts to the affirmative of the other, and leaves no other alternative, these questions are the equivalents of one another, and a decision of the one necessarily concludes the other.

252. A common application of the rule as to equivalent questions occurs in the case of an amendment proposed by striking out words; in which it is the invariable practice to

consider the negative of striking out as equivalent to the affirmative of agreeing; so that to put a question on agreeing, after a question on striking out is negatived, would be, in effect, to put the same question twice over.

253. The principle above stated does not apply so as to prevent putting the same question in the different stages of any proceeding, as, for example, in legislative bodies, the different stages of a bill; so, in considering reports of committees, questions already taken and decided, before the subject was referred, may be again proposed; and, in like manner, orders of the assembly, and instructions or references to committees, may be discharged or rescinded.

254. The inconvenience of this rule, which is still maintained in all its strictness in the British parliament (though divers expedients are there resorted to[as an explanatory or amending act] to counteract or evade it), has led to the introduction into the parliamentary practice of this country of the motion for *reconsideration*; [which is not known in England] which, while it recognizes and upholds the rule in all its ancient strictness, yet allows a deliberative assembly, for sufficient reasons, to

relieve itself from the embarrassment and inconvenience, which would occasionally result from a strict enforcement of the rule in a particular case.

255. It has now come to be a common practice in all our deliberative assemblies, and may consequently be considered as a principle of the common parliamentary law of this country, to reconsider a vote already passed, whether affirmatively or negatively.

256. For this purpose, a motion is made and seconded, in the usual manner, that such a vote be reconsidered ; and, if this motion prevails, the matter stands before the assembly in precisely the same state and condition, and the same questions are to be put in relation to it, as if the vote reconsidered had never been passed. Thus, if an amendment by inserting words is moved and rejected, the same amendment cannot be moved again ; but, the assembly may reconsider the vote by which it was rejected, and then the question will recur on the amendment, precisely as if the former vote had never been passed.

257. It is usual in legislative bodies, to regulate by a special rule the time, manner, and by whom, a motion to reconsider may be

made; thus, for example, that it shall be made only on the same or a succeeding day,—by a member who voted with the majority,—or at a time when there are as many members present as there were when the vote was passed; but, where there is no special rule on the subject, a motion to reconsider must be considered in the same light as any other motion, and as subject to no other rules.

[The member who makes the motion, whether there is a special rule on the subject or not, must belong to the majority, or to the dominant party in a legislative body; it cannot be made by one in the minority, especially where the majority in favor of the proposition is manifestly immovable. All rules, special or general, should tend to discourage a waste of time.—In the Senate of the United States there was in force, until lately, a rule which prevented debate on the motion to reconsider; but on June 21st, 1886, Mr. Edmunds's resolution providing for such an amendment to the rules as to admit of debate on a motion to reconsider was passed, and the rules were amended accordingly. The rule, as thus amended, is in accordance with good parliamentary law; for when the motion for reconsideration is made, and again when it prevails, the motion being a new one, necessarily brings up for discussion the merits of the original question. —Ed.]

CHAPTER XV.

OF COMMITTEES.

SECT. I THEIR NATURE AND FUNCTIONS.

258. It is usual in all deliberative assemblies, to take the preliminary (sometimes, also, the intermediate) measures, and to prepare matters to be acted upon, in the assembly, by means of committees, composed either of members specially selected for the particular occasion, or appointed beforehand for all matters of the same nature.

259. Committees of the first kind are usually called *select*, the others *standing;* though the former appellation belongs with equal propriety to both, in order to distinguish them from another form of committee, constituted either for a particular occasion, or for all cases of a certain kind, which is composed of all the members of the assembly, and therefore denominated a *committee of the whole.*

260. The advantages of proceeding in this mode are manifold. It enables a deliberative assembly to do many things, which, from its

numbers, it would otherwise be unable to do; —to accomplish a much greater quantity of business, by dividing it among the members, than could possibly be accomplished, if the whole body were obliged to devote itself to each particular subject;—and to act in the preliminary and preparatory steps, with a greater degree of freedom, than is compatible with the forms of proceeding usually observed in full assembly.

261. Committees are appointed to consider a particular subject, either at large or under special instructions: to obtain information in reference to a matter before the assembly, either by personal inquiry and inspection, or by the examination of witnesses; and to digest and put into the proper form, for the adoption of the assembly, all resolutions, votes, orders, and other papers, with which they may be charged. Committees are commonly said to be the "eyes and ears" of the assembly; it is equally true, that, for certain purposes, they are also its "head and hands."

262. The powers and functions of committees depend chiefly upon the general authority and particular instructions given them by the assembly, at the time of their appointment;

but they may also be, and very often are, further instructed, whilst they are in the exercise of their functions; and, sometimes, it even happens, that these additional instructions wholly change the nature of a committee, by charging it with inquiries quite different from those for which it was originally established.

Sect. II. Their Appointment.

263. In the manner of appointing committees, there is no difference between standing and other select committees, as to the mode of selecting the members to compose them; and, in reference to committees of the whole, as there is no selection of members, they are appointed simply by the order of the assembly.

264. In the appointment of select committees, the first thing to be done is to fix upon the number. This is usually effected in the same manner that blanks are filled, namely, by members proposing, without the formality of a motion, such numbers as they please, which are then separately put to the question, beginning with the largest and going regularly

through to the smallest, until the assembly comes to a vote.

265. The number being settled, there are three modes of selecting the members, to wit, by the appointment of the presiding officer,—by ballot,—and by nomination and vote of the assembly; the first, sometimes in virtue of a standing rule, sometimes in pursuance of a vote of the assembly in a particular case; the second always in pursuance of a vote; the last is the usual course where no vote is taken.

266. In deliberative assemblies, whose sittings are of considerable length, as legislative bodies, it is usual to provide by a standing rule, that, unless otherwise ordered in a particular case, all committees shall be named by the presiding officer. Where this is the case, whenever a committee is ordered, and the number settled, the presiding officer at once names the members to compose it. Sometimes, also, the rule fixes the number, of which, unless otherwise ordered, committees shall consist. This mode of appointing a committee is frequently resorted to, where there is no rule on the subject.

267. When a committee is ordered to be

appointed by ballot, the members are chosen by the assembly, either singly or all together, as may be ordered, in the same manner that other elections are made ; and, in such elections, as in other cases of the election of the officers of the assembly, a majority of all the votes given in is necessary to a choice.

268. When a committee is directed to be appointed by nomination and vote, the names of the members proposed are put to the question singly, and approved or rejected by the assembly, by a vote taken in the usual manner. If the nomination is directed to be made by the presiding officer, he may propose the names in the same manner, or all at once ; the former mode being the most direct and simple ; the latter enabling the assembly to vote more understandingly upon the several names proposed. When the nomination is directed to be made at large, the presiding officer calls upon the assembly to nominate, and names being mentioned accordingly, he puts to vote the first name he hears.

269. It is also a compendious mode of appointing a committee, to revive one which has already discharged itself by a report ; or by charging a committee appointed for one pur-

pose with some additional duty, of the same or a different character.

270. In regard to the appointment of committees, so far as the selection of the members is concerned, it is a general rule in legislative bodies, when a bill is to be referred, that none who speak directly against the body of it are to be of the committee, for the reason, that he who would totally destroy will not amend; but, that, for the opposite reason, those who only take exceptions to some particulars in the bill are to be of the committee. This rule supposes the purpose of the commitment to be, not the consideration of the general merits of the bill, but the amendment of it in its particular provisions, so as to make it acceptable to the assembly.

271. This rule, of course, is only for the guidance of the presiding officer, and the members, in the exercise of their discretion; as the assembly may refuse to excuse from serving, or may itself appoint, on a committee, persons who are opposed to the subject referred. It is customary, however, in all deliberative assemblies, to constitute a committee of such persons, (the mover and seconder of a measure being of course appointed,) a

majority of whom, at least, are favorably inclined to the measure proposed. [Practically the majority is taken from the political party dominant in the assembly, because a partisan measure is expected and desired.—.Ed.]

272. When a committee has been appointed, in reference to a particular subject, it is the duty of the secretary of the assembly to make out a list of the members, together with a certified copy of the authority or instructions under which they are to act, and to give the papers to the member first named on the list of the committee, if convenient, but, otherwise, to any other member of the committee.

Sect. III. Their Organization and Manner of Proceeding.

273. The person first named on a committee acts as its chairman, or presiding officer, so far as relates to the preliminary steps to be taken, and is usually permitted to do so, through the whole proceedings; but this is a matter of courtesy; every committee having a right to elect its own chairman, who presides over it, and makes the report of its proceedings to the assembly.

274. A committee is properly to receive

directions from the assembly, as to the time and place of its meeting, and cannot regularly sit at any other time or place ; and it may be ordered to sit immediately, whilst the assembly is sitting, and make its report forthwith.

275. When no directions are given, a committee may select its own time and place of meeting; but, without a special order to that effect, it is not at liberty to sit whilst the assembly sits ; and, if a committee is sitting, when the assembly comes to order after an adjournment, it is the duty of the chairman to rise, instantly, of being certified of it, and, with the other members, to attend the service of the assembly.

276. In regard to its forms of proceeding, a committee is essentially a miniature assembly ; —it can only act when regularly assembled together, as a committee, and not by separate consultation and consent of the members ; nothing being the agreement or report of a committee, but what is agreed to in that manner ;—a vote taken in committee is as binding as a vote of the assembly ;—a majority of the members is necessary to constitute a quorum for business, unless a larger or smaller number has been fixed by the assembly itself ;

—and a committee has full power over whatever may be committed to it, except that it is not at liberty to change the title or subject.

277. A committee, which is under no directions as to the time and place of meeting, may meet when and where it pleases, and adjourn itself from day to day, or otherwise, until it has gone through with the business committed to it ; but, if it is ordered to meet at a particular time, and it fails of doing so, for any cause, the committee is closed, and cannot act without being newly directed to sit.

278. Disorderly words spoken in a committee must be written down in the same manner as in the assembly; but the committee, as such, can do nothing more than report them to the assembly for its animadversion ; neither can a committee punish disorderly conduct of any other kind, but must report it to the assembly.

279. When any paper is before a committee whether select or of the whole, it may either have originated with the committee, or have been referred to them ; and, in either case, when the paper comes to be considered, the course is for it to be first read entirely through, by the clerk of the committee, if there is one,

otherwise by the chairman ; and then to be read through again by paragraphs by the chairman, pausing at the end of each paragraph, and putting questions for amending, either by striking out or inserting, if proposed. This is the natural order of proceeding in considering and amending any paper, and is to be strictly adhered to in the assembly ; but the same strictness does not seem necessary in a committee.

280. If the paper before a committee is one which has originated with the committee, questions are put on amendments proposed, but not on agreeing to the several paragraphs of which it is composed, separately, as they are gone through with ; this being reserved for the close, when a question is to be put on the whole, for agreeing to the paper, as amended, or unamended.

281. If the paper be one, which has been referred to the committee, they proceed as in the other case to put questions of amendment, if proposed, but no final question on the whole ; because all the parts of the paper, having been passed upon if not adopted by the assembly as the basis of its action, stand, of course, unless altered or struck out by a vote

of the assembly. And even if the committee are opposed to the whole paper, and are of opinion, that it cannot be made good by amendments, they have no authority to reject it; they must report it back to the assembly, without amendments, (specially stating their objections, if they think proper,) and there make their opposition as individual members.*

282. In the case of a paper originating with a committee, they may erase or interline it as much as they please; though, when finally agreed to, it ought to be reported in a clear draft, fairly written, without erasure or interlineation.

283. But, in the case of a paper referred to a committee, they are not at liberty to erase. interline, blot, disfigure, or tear it, in any manner; but they must, in a separate paper, set down the amendments they have agreed to report, stating the words which are to be inserted or omitted, and the places where the amendments are to be made, by references to the paragraph or section, line, and word.

284. If the amendments agreed to are very

* This rule is not applicable, of course, to those cases in which the SUBJECT, as well as the FORM OR DETAILS of a paper, is referred to the committee.

numerous and minute, the committee may report them altogether, in the form of a new and amended draft.

285. When a committee has gone through the paper, or agreed upon a report on the subject, which has been referred so them, it is then moved by some member, and thereupon voted, that the committee rise, and that the chairman, or some other member, make their report to the assembly.

Sect. IV. Their Report.

286. When the report of a committee is to be made, the chairman, or member appointed to make the report, standing in his place, informs the assembly, that the committee, to whom was referred such a subject or paper, have, according to order, had the same under consideration, and have directed him to make a report thereon, or to report the same with sundry amendments, or without amendment, as the case may be, which he is ready to do, when the assembly shall please; and he or any any other member may then move that the report be now received. On this motion being made, the question is put whether the as-

sembly will receive the report at that time; and a vote passes, accordingly, either to receive it then, or fixing upon some future time for its reception.

287. At the time, when, by the order of the assembly, the report is to be received, the chairman reads it in his place, and then delivers it, together with all the papers, connected with it, to the clerk at the table; where it is again read, and then lies on the table, until the time assigned, or until it suits the convenience of the assembly, to take it up for consideration.

288. If the report of the committee is of a paper with amendments, the chairman reads the amendments with the coherence in the paper, whatever it may be, and opens the alterations, and the reasons of the committee for the amendments, until he has gone through the whole; and, when the report is read at the clerk's table, the amendments only are read without the coherence.

289. In practice, however, the formality of a motion and vote on the reception of a report is usually dispensed with; though, if any objection is made, or if the presiding officer sees any informality in the report, he should decline

receiving it without a motion and vote; and a report, if of any considerable length, is seldom read, either by the chairman in his place, or by the clerk at the table, until it is taken up for consideration. In legislative assemblies, the printing of reports generally renders the reading of them unnecessary.

290. The report of a committee being made and received, the committee is dissolved, and can act no more without a new power; but their authority may be revived by a vote, and the same matter recommitted to them. If a report, when offered to the assembly, is not received, the committee is not thereby discharged, but may be ordered to sit again, and a time and place appointed accordingly.

291. When a subject or paper has been once committed, and a report made upon it, it may be recommitted either to the same or a different committee; and if a report is recommitted, before it has been agreed to by the assembly, what has heretofore passed in the committee is of no validity; the whole question being again before the committee, as if nothing had passed there in relation to it.

292. The report of a committee may be made in three different forms, namely: *first*

it may contain merely a statement of facts, reasoning, or opinion, in relation to the subject of it, without any specific conclusion; or, *second*, a statement of facts, reasoning, or opinion, concluding with a resolution, or series of resolutions, or some other specific proposition; or, *third*, it may consist merely of such resolutions, or propositions, without any introductory part.

293. The first question, on a report, is, in strictness, on receiving it; though in practice, this question is seldom or never made; the consent of the assembly, especially in respect to the report of a committee of the whole, being generally presumed, unless objection is made. When a report is received, whether by general consent, or upon a question and vote, the committee is discharged, and the report becomes the basis of the future proceedings of the assembly, on the subject to which it relates.

294. At the time assigned for the consideration of a report, it may be treated and disposed of precisely like any other proposition (59 to 77); and may be amended, in the same manner (78 to 133), both in the preliminary statement, reasoning, or opinion, if it contain any,

and in the resolutions, or other propositions with which it concludes; so if it consist merely of a statement, &c., without resolutions, or of resolutions, &c., without any introductory part.

295. The final question on a report, whatever form it may have, is usually stated on its acceptance; and, when accepted, the whole report is adopted by the assembly, and becomes the statement, reasoning, opinion, resolution, or other act, as the case may be, of the assembly; the doings of a committee, when agreed to, adopted, or accepted, becoming the acts of the assembly, in the same manner as if done originally by the assembly itself, without the intervention of a committee.

296. It would be better, however, and in stricter accordance with parliamentary rules, to state the final question on a report, according to the form of it. If the report contain merely a statement of facts, reasoning, or opinion, the question should be on acceptance; if it also conclude with resolutions, or other specific propositions, of any kind,—the introductory part being consequently merged in the conclusion,—the question should be on agreeing to the resolutions, or on adopting the order, or other

proposition, or on passing or coming to the vote, recommended by the committee; and the same should be the form of the question when the report consists merely of resolutions, &c., without any introductory part.

Sect. V. Committee of the Whole.

297. When a subject has been ordered to be referred to a committee of the whole, the form of going from the assembly into committee, is, for the presiding officer, at the time appointed for the committee to sit, on motion made and seconded for the purpose, to put the question that the assembly do now resolve itself into a committee of the whole, to take under consideration such a matter, naming it. If this question is determined in the affirmative, the result is declared by the presiding officer, who, naming some member to act as chairman of the committee, then leaves the chair, and takes a seat elsewhere, like any other member; and the person appointed chairman seats himself (not in the chair of the assembly but) at the clerk's table.

[It is now generally otherwise. Jefferson's *Manual* agrees with Mr. Cushing's, that the Chairman should take his seat at the clerk's

table, but as a matter of fact, he usually takes the seat of the presiding officer, and the latter is permitted to take part in the proceedings as though he were a private member.—Ed.]

298. The chairman named by the presiding officer is generally acquiesced in by the committee; though, like all other committees, a committee of the whole have a right to elect a chairman for themselves, some member, by general consent, putting the question.

299. The same number of members is necessary to constitute a quorum of a committee of the whole, as of the assembly; and if the members present fall below a quorum, at any time, in the course of the proceedings, the chairman, on a motion and question, rises,—the presiding officer thereupon resumes the chair,—and the chairman informs the assembly (he can make no other report) of the cause of the dissolution of the committee.

300. When the assembly is in committee of the whole, it is the duty of the presiding officer to remain in the assembly-room, in order to be at hand to resume the chair, in case the committee should be broken up by some disorder, or for want of a quorum, or should rise, either to report progress, or to make their

final report upon the matter committed to them.

301. The clerk of the assembly does not act as clerk of the committee (this is the duty of the assistant clerk in legislative bodies), or record in his journal any of the proceedings or votes of the committee, but only their report as made to the assembly.

302. The proceedings in a committee of the whole, though, in general, similar to those in the assembly itself, and in other committees, are yet different in some respects, the principal of which are the following :—

303. *First.* The previous question cannot be moved in a committee of the whole. The only means of avoiding an improper discussion is, to move that the committee rise ; and, if it is apprehended, that the same discussion will be attempted on returning again into committee, the assembly can discharge the committee, and proceed itself with the business, keeping down any improper discussion by means of the previous question.*

* If the object be to stop debate, that can only be effected, in the same manner, unless there is a special rule, as to the time of speaking, or to taking a subject out of committee.

304. *Second.* A committee of the whole cannot adjourn, like other committees, to some other time or place, for the purpose of going on with and completing the consideration of the subject referred to them; but if their business is unfinished, at the usual time for the assembly to adjourn, or, for any other reason, they wish to proceed no further at a particular time, the form of proceeding is, for some member to move that the committee rise,—report progress,—and ask leave to sit again; and, if this motion prevails, the chairman rises,—the presiding officer resumes the chair of the assembly,—and the chairman of the committee informs him that the committee of the whole have, according to order, had under their consideration such a matter, and have made some progress therein*; but, not having had time to go through with the same, have directed him to ask leave for the committee to sit again. The presiding officer thereupon puts a question on giving the committee leave to sit again, and also on the time when the assembly will again resolve itself

* If it is a second time, the expression is, "some further progress," &c.

into a committee. If leave to sit again is not granted, the committee is of course dissolved.

305. *Third.* In a committee of the whole, every member may speak as often as he pleases, provided he can obtain the floor; whereas in the assembly itself, no member can speak more than once. [See *note, par.* 215.]

306. *Fourth.* A committee of the whole cannot refer any matter to another committee; but other committees may and do frequently exercise their functions, and expedite their business by means of sub-committees of their own members.

307. *Fifth.* In a committee of the whole, the presiding officer of the assembly has a right to take a part in the debate and proceedings, in the same manner as any other member.

308. *Sixth.* A committee of the whole, like a select committee, has no authority to punish a breach of order whether of a member, or stranger; but can only rise and report the matter to the assembly, who may proceed to punish the offender. Disorderly words must be written down in committee, in the same manner as in the assembly, and reported to the assembly for their animadversion.

309. The foregoing are the principal points of difference between proceedings in the assembly and in committees of the whole; in most other respects they are precisely similar. It is sometimes said, that in a committee of the whole, it is not necessary that a motion should be seconded. There is no foundation, however, either in reason or parliamentary usage, for this opion.

310. When a committee of the whole have gone through with the matter referred to them, a member moves that the committee rise, and that the chairman (or some other member) report their proceedings to the assembly; which being resolved, the chairman rises and goes to his place,—the presiding officer resumes the chair of the assembly,—and the chairman informs him, that the committee have gone through with the business referred to them, and that he is ready to make their report, when the assembly shall think proper to receive it. The time for receiving the report is then agreed upon; and, at the time appointed. it is made and received in the same manner as that of any other committee (286.)

311. It sometimes happens, that the formality of a motion and question as to the time of

receiving a report is dispensed with. If the assembly are ready to receive it, at the time, they cry out, "now, now," wherepon the chairman proceeds; if not then ready, some other time is mentioned, as "to-morrow," or "Monday," and that time is fixed by general consent. But, when it is not the general sense of the assembly to receive the report at the time, it is better to agree upon and fix the time by a motion and question.

[The report is merely tentative and advisory; amendments may be amended or rejected, and matters stricken out by the committee of the whole or any other committee, may be restored by the assembly.—Ed.]

CONCLUDING REMARKS.

312. In bringing this treatise to a close, it will not be deemed out of place, to make a suggestion or two for the benefit of those persons, who may be called upon to act as presiding officers, for the first time.

313. One of the most essential parts of the duty of a presiding officer is, to give the

closest attention to the proceedings of the assembly, and, especially, to what is said by every member who speaks. Without the first, confusion will be almost certain to occur; wasting the time, perhaps disturbing the harmony, of the assembly. The latter is not merely a decent manifestation of respect for those who have elevated him to an honorable station; but it tends greatly to encourage timid or diffident members, and to secure them a patient and attentive hearing; and it often enables the presiding officer, by a timely interference, to check offensive language, in season to prevent scenes of tumult and disorder, such as have sometimes disgraced our legislative halls.

314. It should be constantly kept in mind by a presiding officer, that, in a deliberative assembly, there can regularly be but one thing done or doing, at the same time. This caution he will find particularly useful to him, whenever a quarrel arises between two members, in consequence of words spoken in debate. In such a case, he will do well to require that the regular course of proceeding shall be strictly pursued; and will take care to restrain members from interfering in

any other manner. In general, the solmnity and deliberation, with which this mode is attended, will do much to allay heat and excitement, and to restore harmony and order to the assembly.

315. A presiding officer will often find himself embarrassed, by the difficulty, as well as the delicacy, of deciding points of order, or giving directions as to the manner of proceeding. In such cases, it will be useful for him to recollect, that—

THE GREAT PURPOSE OF ALL RULES AND FORMS, IS TO SUBSERVE THE WILL OF THE ASSEMBLY RATHER THAN TO RESTRAIN IT; TO FACILITATE, AND NOT TO OBSTRUCT, THE EXPRESSION OF THEIR DELIBERATE SENSE.

SECRET SESSIONS.

316. It is the custom of the Senate of the United States, though it has no special rule requiring it,* to hold *secret sessions*, especially in its discussions, confirmations and rejections

* There ought to be no secrets whatever in this Government of ours, a Government of the people. There is no law, or provision or rule, or regulation, which provides for keeping secrets. — Speech of SENATOR SHERMAN, of Ohio, in the Senate, Jan. 1886.

of executive appointments. Both houses of Congress, under the constitution, while required to keep and to publish, a journal of their proceedings, can withhold from publication, "such parts as may in their judgment require secrecy." It is likewise the practice, and it is competent for nearly all deliberative bodies, to sit with "closed doors," and to keep secret such portion of their proceedings as they may deem it inexpedient,—perhaps hurtful to public or private interests,—to divulge; but considerations of conscience and of public policy demand that this undoubted right, and sometimes duty, should be exercised with discretion. In a country where the people are, at least, nominally, sovereign, and ultimately control, shape or reverse the acts of public as well as of private deliberative assemblies, every act, speech and vote of their representatives should be exposed, at once, to the strong light of popular intelligence, for censure or approval; and practically, this is the final result, however much concealment may be attempted, or impunity from the consequences of questionable or guilty proceedings sought in secret deliberations and votes by the members of any representative body.

Though many other deliberative assemblies, besides the Senate of the United States, on certain critical or delicate occasions, sit with closed doors, and keep their proceedings secret, yet for a great political body to shroud its acts in secrecy on questions of public interest, generally gives rise to partisan clamor and to allegations of guilt or corruption; therefore its doors should be kept open when publicity, as is generally the case, is unobjectionable, and the national well-being is not imperilled by making the people partakers in the deliberations of their representatives.—Ed.]

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rule of the senate of the United States, requiring each member to vote without debate; enforcement of this rule to secure a quorum, *note* 25.

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